CATHOLICS IN CONTROVERSY

BY

JAMES M. O'NEILL

AUTHOR OF
RELIGION AND EDUCATION
UNDER THE CONSTITUTION
AND
CATHOLICISM AND AMERICAN
FREEDOM

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That controversy, arising from differences of opinion, should exist in a free society is a basic concept of democracy. From this premise, it naturally follows that various groups are bound to have differences of opinion about their relations to each other and to that society. This is particularly true in the field of religion.

In his new book, Dr. O'Neill discusses controversy and the Catholic positions in the three principal areas in which controversies involving Catholics have arisen. In his opening section, he discusses the nature of controversy and its place in a free society. He emphasizes that controversy is an inevitable and desirable aspect of life in a free society. This is particularly true in the United States whose population is an aggregation of minorities with different religious, racial and cultural backgrounds.

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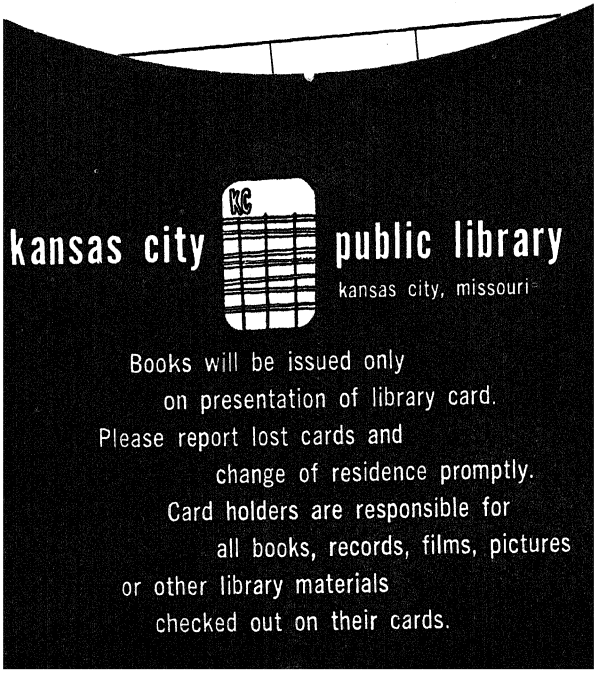

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JAMES M. O'NEILL, LL.D., L.H.D.

Author of
Religion and Education under the Constitution
Catholicism and American Freedom

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To

My First Grandson

Gian Giacomo Romagnoli

6108562

Preface

This book is written as a personal statement concerning the position and activity of American Catholics in the controversies which challenge them today. In conformity to the plan to keep the relationship between writer and reader much like that between speaker and hearer, it was decided to omit all footnotes. Appropriate references to publications are, therefore, included in the text, as they would be of necessity in a lecture.

However, if any reader wishes further to investigate sources and evidence, he can easily do so in the publications mentioned, and particularly in the author's *Religion and Education under the Constitution* and *Catholicism and American Freedom,* and his forthcoming *Censorship and Freedom.*

J. M. O'Neill

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I.

The Place of Controversy in a Democracy

A CONTROVERSY is a discussion or debate, or a series of discussions or debates, *pro* and *con,* on a subject whereon people differ.

Controversy is the natural and unavoidable result, in speech or writing, of a difference of opinion in any society where people have freedom of expression. In our American society we have inevitably a great many controversies on a wide variety of subjects.

Controversy Is Inevitable

If the controversies that are inevitable in our democracy are to serve our freedom instead of hinder it, they must be carried on in recognition of known facts, honestly and fairly, employing accurate information instead of prejudice, and logic instead of bitter innuendo. Contradiction is rarely convincing argumentation; assertion and denial without support make poor controversy; name-calling is not evidence. If we have controversies, and we must so long as we remain a free people, let us have factual, courteous, reasonable controversies. And when the processes of a free democracy have rendered a decision, let us all accept the result calmly, give the verdict a fair trial, and after that, if we wish, try, still through the method of competent debate, to bring about salutary changes.

The Parties to Controversy

The population of the United States of America is an aggregation of minorities. While Catholics, Jews, and Negroes are easily recognized as three large American minorities, they are far

from being the only American minorities. We have never had in this country a monolithic, closely integrated American majority of any kind in charge of our cultural life. Americans differ as to racial background, religious affiliation, economic interests, geographic loyalty, and all sorts of other possible dividing lines among groups. Each American is a member of at least one minority, and most Americans are probably members of five or six different minorities.

Furthermore, Americans have differences of opinion, not only among groups, but among the members of any particular group. The members of each religious group (as Catholic, Protestant, or Jewish) differ among themselves on politics, economics, foreign affairs, neighborhood policies, and state and federal legislation of all sorts. The idea that there is any such thing as the Protestant position, or the Jewish position, or the Catholic position, on any political, economic, or international question facing the American people today is quite absurd. The rather frequent assertion of hostile critics of American Catholics that Catholics think alike—as directed by the clergy—is false and silly. This can be shown by inquiring of a few Catholic Democrats and Catholic Republicans, or by an hour's examination of the Catholic press of the country. The leading Catholic journals of New York City alone, for instance, exhibit, beyond any question, as complete and fervent differences of opinion as can be found in the non-Catholic or secular press. If anyone doubts this I suggest that he examine the files of *America, The Catholic World, Commonweal,* and *The Tablet.*

The Settlement of Controversy

Any subject or proposition on which it is possible or probable that people may have differences of opinion is a controversial subject. Any person who takes a position on such a subject in a free society should expect to be involved in a controversy with anyone who wishes to take an opposite position. When two people, or two groups of people, differ on a subject of such impor-

tance that it is necessary for the matter to come to some kind of settlement, there are basically only two methods by which such controversies can be settled. Since mankind began to have differences of opinion, he has known only two ultimate methods of settling a controversy. One is to fight it out; the other is to talk it out. Controversies may be settled by men or by nations, by resorting to force and letting the decision go to the party who has the strongest muscles, the biggest guns, the largest fleet, or the most powerful bombs. Or the controversy may be settled by discussion and debate in private conversation, or in the courtroom, or the legislature, the national elections, or in other forms of "talking it out" that civilized men employ to settle differences.

There are no other ways. Even if it should be decided to settle a controversy by drawing straws, or tossing a coin, the decision to settle it that way has first to be made—either by agreement in discussion, debate, argument, or by the use of force, compelling a person or a group to submit to the arbitration of a tossed coin.

Debate the Technique of a Free Society

Controversy, argumentation, debate is the technique by which any free society functions. People who are afraid of controversy and think that controversy should be avoided, or can be avoided, are those who fail to realize the essential nature of a free society. They miss much of the satisfaction, as well as many of the responsibilities, of life in a free democracy. Such people can never be well adjusted to a life of freedom anywhere. They are by-standers only, silent spectators of the processes of democracy, but inevitably either beneficiaries or victims of its fruits. Only those who are willing to participate in controversy, and who know how to participate adequately and effectively, can ever make their proper contribution to the development of a functioning democracy.

Among the hindrances at the present time to the full use and development of freedom in our society are the groups and persons

who attempt to prevent controversy being indulged in by others. They seem to think that controversy is in itself an evil thing. Mr. John Crosby in the New York *Herald Tribune* of November 30, 1953, in commenting upon some modern instances of attempts to prevent people from taking part in public controversy, said, "I never thought I'd live to see the day when the word 'controversial' would become a dirty word." Wherever controversy is treated as a social evil, and 'controversial' is held to be a dirty word, freedom is either dead or dying.

Consensus vs. Majority Decision

The position sometimes taken, particularly in educational circles, is that when there is a difference of opinion among members of a group the proper procedure should be, not to try to persuade people to the point of view that any particular person may believe is the best one, but to find out what the group wants. In other words, try to get a consensus rather than a decision for your side of the controversy.

The idea that there is some essential merit or morality about consensus—about a majority opinion or the general opinion of a group, in and of itself—is something that will not stand careful examination by anyone who believes in any standard of truth, justice, or morality. This false idea in one of its forms underlies what Professor Brogan of Cambridge University called Mr. Blanshard's "theory of statistical morality"—that is, the idea that a political majority establishes what is and what is not morally justifiable. This is basic to Mr. Blanshard's position that the Catholic Church is disloyal to America in teaching that Catholics are not bound to obey the laws of a political unit if the laws violate the conscience of the individual. This horrified Mr. Blanshard, who seemed to think that it was a thoroughly un-American and disloyal doctrine, not seeming to realize that the same doctrine is held by orthodox Protestants and orthodox Jews —in fact, probably by everyone who has any moral code of any kind.

Obviously, in a political democracy the opinion of the majority is likely to prevail eventually and should prevail so long as it does not violate the inherent rights of minorities or the conscience of individual citizens. That is a different thing from feeling that in any particular situation the objective of all discussion should be simply to find out what the majority want, rather than trying to see to it that the majority want something that the speaker thinks is true and just. Those who believe that in social discussions the objective should be to look for consensus, rather than for the decision they believe in, must have very little interest in whether the society to which they belong goes forward or backward. The decisions that are made in social situations, big and little, must necessarily determine whether progression or retrogression shall be the path of our society.

Controversial Publications and Persons

A few years ago, the State of Montana had on its statute books a law which prohibited "sectarian, partisan, or controversial books or publications" in the libraries of the public schools and colleges of that state. If this law were strictly enforced, it would mean, obviously, that no public school or college could have a good library. Such a policy would eliminate many of the most worth-while books on religion, politics, economics, health, and innumerable other subjects of importance to the American people.

Recently, a vigorous protest was made against a state high school debating league debating the social value of chain stores. It was urged, in all seriousness, that the high schools should not be allowed to debate a controversial subject!

People who are not well adjusted to life in a free society are not only afraid of live books, they are afraid of live people. In October, 1953, for instance, Bishop G. Bromley Oxnam of the Methodist Church was denied the use of the Philharmonic Auditorium in Los Angeles, on the publicly reported ground that he was a "controversial" figure. Of course Bishop Oxnam is a con-

troversial figure. I suppose that all the bishops in America, of every church, are at least potentially, and often actually, controversial figures. So are President Eisenhower, ex-President Truman, Governor Adlai Stevenson, Secretary Benson, Secretary Brownell, Cardinal Spellman, and Governor Dewey—in fact, most men in public life are inevitably controversial figures. If they are not to be allowed to speak to members of the public who wish to listen to them, it seems clear that that means the end of a free society in this country.

Recently, in Indianapolis, the American Civil Liberties Union, at the instigation of the American Legion, was denied the use of a hall for a public meeting, on the ground that the hall could not be used by "controversial" groups. Clearly, the American Civil Liberties Union is a controversial organization; so is the American Legion. The representatives of the Civil Liberties Union frequently indulge in controversies, as do the representatives of other organizations, before the Supreme Court of the United States and elsewhere. In the same way, the Republican Party, the Democratic Party, Americans for Democratic Action, the American Medical Association, the United States Chamber of Commerce are all controversial organizations. If we cannot have controversies participated in by the representatives of such organizations, then we should stop pretending to be free people. We shall have to remain static, crystallize the present situation without change for all time, or simply take orders, without comment or controversy, from some dictator.

There have been instances in this country in which boards of education have passed resolutions to the effect that no controversial meetings may be held in public school buildings. If this resolution should be strictly enforced, the faculties of the various schools would have to hold their faculty meetings outside the school buildings, since faculty meetings are very frequently, and with complete justification, thoroughly controversial meetings, and the subjects discussed in them, and settled in them, are thoroughly controversial subjects. If a public auditorium is completely to serve the public interest in any particular community,

it should be available for controversial meetings as the exact type of meeting that is often in many respects most beneficial to the people of the community.

Most of the best speeches that have ever been made in the history of the human race are controversial. Anyone who wishes to prevent the public from hearing controversial speeches seems obviously to be, either wittingly or unwittingly, opposed to the proper functioning of democracy. The way of freedom is to let "A" make his speech, and then let "B" who opposes "A" make his speech, and let the listeners decide which one, if either, they wish to follow.

Administrative Discretion

Obviously, the people in charge of the administration of any particular hall may at times, for perfectly proper reasons, deny the hall to certain speakers. Speakers who are notorious as "rabble rousers," who deal almost exclusively in misinformation, prejudice, insults to groups in the community, who are likely to incite public disorder, may properly be denied the use of certain halls. But it seems that both frankness and sound public policy require that the denial be based on decent reasons, and that the true reasons for the denial be made public. It is always unfortunate to give as the reason for such a denial that the speaker is a controversial person, or is talking on a controversial subject. Freedom of speech within the law is the American way, and controversy is the way in which American democracy functions.

Restricted Places and Captive Audiences

Freedom of speech in our country means that anyone who is not speaking in violation of the law should have the right to speak, to those who wish to listen to him, in any place where he has permission to speak from whoever has lawful authority to control the use of the place concerned in each instance. Freedom of speech does not and cannot, in an orderly society, mean that

any man has a right to make his speech anywhere he wishes to make it. Or that he has a right to speak to a "captive audience" which did not come together to hear his speech, as people in a public park on Sunday afternoon.

No one has the right to speak in my living room unless I wish him to speak there. No one has the right to speak in a public school or college unless the authority in charge of the public school or college is willing to have him speak there. No one has the right in himself to speak in any public park, hospital, or library, or on any street corner, unless he has permission from the authority which the public has put in charge of the particular institution or area.

For instance, to be specific, neither the President of the United States, the Governor of New York, nor the Mayor of New York City, has any *right* to speak in one of the municipal colleges of New York City. He may be invited, or permitted, to speak in one of the public colleges, if the college authorities who have the responsibility in this matter so desire. But his civil liberty or freedom of speech is not violated if the college authorities decide otherwise. Such a decision may be inexpedient, stupid, bad educational policy, or cheap politics, but it violates no one's freedom of speech. A public school or college has the same right and responsibility to control the use of its facilities for what it conceives to be its proper function as has a public library, hospital, or ferry boat. And, clearly, any person has a right to his own opinion as to how stupid the college, library, hospital, or ferry boat authorities are in the exercise of their responsibilities.

2.

The Position of Catholics in Current Controversy

SINCE THE HISTORY of mankind in general and of the United States in particular is what it is (and since it is too late to change any of it), the present position of American Catholics is, not surprisingly, one in which they are faced with misrepresentation of historical facts, distortion and misunderstanding of Catholic doctrine, false assumption as to Catholics' beliefs and aspirations as citizens, and particularly with the completely silly idea that they are regularly told by the clergy what to think, say, do, how to vote on the social, political, economic, and international problems of the day. No one who knows history is surprised at a certain amount of these occasions for controversy. But there are two aspects of the current situation that doubtless do surprise many Americans, especially those who are well informed in human history: first, the tremendous burgeoning of this poisonous growth in the last decade; and second, the fact that those responsible for it, both as authors and endorsers, are literate and presumably educated Americans. The university graduate, the lawyer, the minister, the college professor, the Phi Beta Kappa scholar, who are often responsible, constitute a new kind of Ku Klux Klan that can read and write.

Catholics as a Controversial Group

American Catholics are one of the easily recognized large minorities in America. In recent years they have had many controversies, great and small, "thrust upon them." Spreading misinformation about Catholicism and American Catholics appears to have become a profitable business, particularly in three complex and always controversial fields of thought and action: the relation of government to religion or "church and state," censorship, and religious education.

In 1949, Mr. Paul Blanshard published his *American Freedom and Catholic Power,* filled with misrepresentation, misstatement, and innuendo concerning Catholics and the Catholic Church in America. Rather quickly, a number of authors followed Mr. Blanchard into the "market." Notable in this group are Professor James Hasting Nichols of the University of Chicago, Dr. Conrad Moehlman of Rochester, New York, Dr. Leo Pfeffer, attorney for the American Jewish Congress, and Dr. W. J. Dawson of Washington, D. C., spokesman for certain organizations in the Baptist Church and active in Protestants and Other Americans United. In addition, there have been presented to the public in the last few years many speeches by a group of which probably Bishop Oxnam is the most prominent, frequent letters to the press, articles in the magazines, and sermons in the churches, which are replete with misinformation in regard to Catholicism and American Catholics.

In view of the availability of accurate information, it is hard to escape the conclusion that a great deal of this activity is the result of rather careful avoidance of information and understanding. The only other explanation (that of deliberate distribution of what one knows to be false), while a theoretical possibility, is obviously something that could not easily be known to anyone except the writers and speakers themselves. But the misrepresentation can hardly escape anyone, of any religion, or of none, who is familiar with the matter discussed in such books, articles, letters, lectures, and sermons.

Such attacks have challenged Catholics to controversy to an extent and in an atmosphere that is unique in American history. And these occasions for controversy present the American Catholic with the necessity of making some kind of answer. What shall it be?

Three Ways of Pleading Guilty

It seems clear that Catholics, like all others who are subject to unfounded and unjust attacks, must either answer the attacks

made upon them, or inevitably be accused of not being able to answer. Silence will quite properly be widely accepted as a confession of guilt. There seem to be three rather clumsy ways sometimes adopted by Catholics of taking a position without answering the current attacks. These seem to be three ways of pleading guilty.

First, there are the Catholics who, when asked concerning some of the matters improperly presented in the anti-Catholic books and articles reply, "We never discuss religion." When religion is attacked, those who believe in religion should defend it; when Catholicism is attacked, those who believe in the Catholic religion should defend it. When a sincere inquirer asks a question in regard to the Catholic religion, or the beliefs, practices, and aspirations of American Catholics, he should receive a true, frank, and reasonably complete answer. The answer that one "doesn't discuss religion" seems to have two most unfortunate results. One is that it is almost inevitably taken to mean that you don't have any answer that you dare present. The other is that the sincere questioner will probably never again ask a question of any Catholic about the Catholic religion or the activities of American Catholics. This means, of course, that he will go through life believing the misinformation that has been so elaborately provided for him.

The second roundabout way of pleading guilty is to say that you "wish to avoid controversy"—that you do not believe in "controversy about religion." Probably the inadequacy of this answer has been sufficiently discussed already. People who feel that they must avoid controversy can probably never adequately serve their church, or their society.

The third way of pleading guilty to the charges brought against American Catholics is to offer advice which is in itself good, but which is no answer to the specific charges against the Catholic Church or its members. That advice is: "Prove by the example of your life that the attacks upon the Catholic religion are false." I certainly should not wish to encourage the idea that Catholics should not try to prove by the example of their lives

that they are loyal citizens, good Catholics, moral people; but that example will not answer the charges that have been brought against Catholics in the current controversies which have been thrust upon them.

American Catholics faced by the current charges not only owe refutation to themselves and to their Church, they owe it to their country. They owe it to society to try to end the bitter misunderstanding and suspicion that is a result of the recent anti-Catholic propaganda. Our society, any free society, will function at its best only when bitterness and suspicion are kept to an absolute minimum among its members. Theological differences should not, and in most instances, of course, do not, prevent amicable relations, complete co-operation, as citizens among the different groups that make up the complex population of the United States. That is the way it should be. It is only as we do our utmost to minimize the evil effect of widespread misinformation that we can properly serve the development of the kind of society which our country needs.

When the World Congress of Pax Romana met in Amsterdam, Holland, in August 1950, the Congress received an inspiring message from Pope Pius XII. The high point of this message, at least to all who lived in a free society in any of the countries of the world, was the Pope's urging of Catholic scholars and intellectuals to participate in the life around them, to seek to affect the solution of contemporary problems in their society. It seems quite clear that this injunction of the Pope cannot be carried out, even to a minimum extent, except by *effective* attempts to answer charges that are brought against the Church and American Catholics in the controversies of our time. American Catholics can do little to affect the solution of contemporary problems when they allow to succeed the attempts to brand them as disloyal citizens, as enemies of the Constitution, as opponents of the civil liberties of the people of the United States. And, certainly, American Catholics cannot much affect the solution of contemporary problems by talking to themselves.

The observation has frequently been made in recent years, by both priests and laymen who are especially disturbed by the present campaign against American Catholics, that the needed answers are best made by members of the laity. My experience as a teacher in public education for forty years, and as a teacher in non-Catholic private education for six more, emphatically confirms this position. This is not to say, of course, that the members of the priesthood do not know the answers, or are incapable of making them. The reasons for thinking that informed members of the laity can do this particular job better than the clergy are two.

First, most of the answers probably are best made when the results of the false propaganda come up in the informal contacts of the business, social, professional activities of our pluralistic society. Such occasions are faced when at the luncheon table, in the smoking room, on the street, in the faculty meeting, or the conference room, someone makes a remark that indicates he has accepted misinformation as the truth. Probably, on such occasions, some lay member of the Church is present hundreds of times to one on which a priest is present. Questions, or uncomplimentary statements, that show misunderstanding of things Catholic simply are not often made in the presence of a Catholic priest. But they are not at all uncommon in the presence of Catholic laymen.

Second, a written or spoken answer, even a formal speech or scholarly pamphlet or book, by a priest seems clearly less persuasive to most non-Catholics than an answer by a Catholic layman or woman who is a well-known, friendly neighbor, colleague, or fellow worker, either on the regular job or for some public cause. The non-Catholic who has been "taken in" by the misrepresentations of the current flood of anti-Catholic publications and speeches is already innoculated with a potent serum against believing *anything* that a Catholic priest says.

This is a job for the laity, and more, many more, lay members

of the Church should be well prepared and active in this work. I have heard a number of priests who were thoroughly informed about Catholic education in this country express surprise and regret that larger numbers of the graduates of Catholic schools and colleges do not engage in more of this much needed activity.

Help Needed from Catholic Education

I believe that a significant part of the explanation, and one which has for some years concerned Catholic teachers in the field of speech (both lay and clerical, in both Catholic and non-Catholic education), is a weakness in the curriculum of many Catholic schools and colleges. I refer to the absence (or near absence) of sound courses in the regular curriculum in argumentation, debate, persuasion, public speaking. The inevitable result of this lack is that too many of the graduates do not know how to analyze and to answer hostile propaganda—even though they recognize the falseness, the inaccuracy, of the statements and the innuendos.

I know that a number of priests on the faculties of schools and colleges are fully aware of this weakness and its most unfortunate results; I know that they are trying to improve the situation and are not moving forward as they wish. I also have a firm conviction, after listening to Catholic sermons for many decades in various parts of the country, that the Catholic seminaries fail almost totally, in a great many instances, to teach the future priests even the rudiments of how (not *what,* but *how*) to communicate effectively with an audience or a congregation. If a man does not know *how* to preach (or to sing, or cook, or write, or build), the *what* that he would like to preach (or to sing, or cook, or write, or build) is a matter of little importance. If the time spent in the pulpits of all Catholic churches in America every Sunday were competently used, the results in constructive effect would be comparable to the destructive results of an atom bomb.

3.

The American Doctrine of the Separation of Church and State

THE PRINCIPAL AREA of attack on the loyalty of American Catholics concerns the religious clause of the First Amendment to the Constitution of the United States. This clause reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The specific, false charge most often made in the current anti-Catholic campaign is that American Catholics are opposed to "the separation of church and state."

The American Type of Separation

Our American theory of the separation of church and state is expressed primarily in the "establishment clause" of the First Amendment, namely, that "Congress shall make no law respecting an establishment of religion." To a much smaller extent this American theory is expressed in the second part of the religious clause of the First Amendment: ". . . or prohibiting the free exercise thereof." The two men who probably had the greatest influence on the formulation of the American doctrine of the relation between "church and state" or "government and religion," Thomas Jefferson and James Madison, regularly treated the subjects "an establishment of religion" and "freedom of religion" as two separate but related concepts. Similarly, the Supreme Court of the United States has kept the same distinction.

The establishment clause of the First Amendment is the part for which the modern substitute of either "a wall of separation between church and state" or "complete separation of church and state" is almost universally used by those who object to the

original and constant meaning of the First Amendment—from 1789 to 1947.

Clearly, the relation between the federal government and religion which is declared in the First Amendment expresses a certain type of separation between church and state, that is, they can not be formally united in an exclusive union. This is the American type, and it differs markedly from the type of separation of church and state in various other countries.

It is substantially accurate to say that the use of the phrase "separation of church and state" in the United States of America started in Virginia. There the phrase was used (as it is throughout Eckenrode's scholarly brochure, *The Separation of Church and State in Virginia*), in its literal, accurate sense, when the Anglican Church of Virginia was separated from the government of Virginia. There had been a unity; the church and the government of the state had been united. The Anglican Church had for many years been the established church in Virginia. In the eighteenth century it was *separated* from the government of Virginia, largely by the efforts of Jefferson and Madison. Virginia thus brought about a genuine separation of church and state. In Virginia this phrase had the specific meaning of taking apart two things which had been united, as though one separated a farm into two pieces of property, or a man and his wife were separated after having been united in marriage.

Following this development in Virginia, which may be said to have been completed by Jefferson's Bill for Religious Freedom in 1786, the phrase "the separation of church and state" has been generally accepted, until recent years, as the absence of "an establishment of religion" in the United States, that is, the absence of monopolistic governmental favor given by law to *one religious group*.

So far as I have been able to discover, there are no Americans of any political party or any religious creed who are opposed to this basic American type of separation of church and state. In this fundamental principle of "no establishment," all Americans seem to be united. I know of no American who advocates,

or believes in, the establishment of any one religion in the United States of America, or in any state in the union.

The Language Involved

I suppose it ought to be clear to anyone who is familiar with the English language that the phrase, "Congress shall make no law respecting an establishment of religion," is a clear statement that the Congress of the United States shall not enact any legislation on (that is, either *for* or *against*) the specific subject, "an establishment of religion."

On the other hand, the phrase, "the separation of church and state," is obviously about as ambiguous a phrase as could be put into any six words in the English language. "Separation," "church," and "state" each have many meanings. Even if in a given context the word "church" or the word "state" could be accepted as having a reasonably specific meaning, all of that specificity would probably be cancelled by the extreme ambiguity of the word "separation." Separation may mean anything from the total, absolute ending of all contact (of the sort brought about by death), to the kind of a dividing line that we have in the common phrase "the separation of powers in the federal government," or in the separation between one state and another, or between the federal government and the state.

The legislative, executive, and judicial branches of the federal government are separate. They are separated from one another; but of course there is constant interplay between them, support of one by the other, interlocking of their activities. In some dwellings the kitchen is separated from the living room, and in some it is not. But when the kitchen and living room are separated, it is usually by a division through which co-operative activity may pass—not by a wall high and impregnable. So on the farms, the pastures are separated from the orchards and the grain fields. And the head may be separated from the torso, either by the neck or by the guillotine; the one functional, the other fatal.

It seems that only those whose purposes are best accom-

plished in the murky atmosphere of extreme ambiguity would wish to substitute "the wall of separation between church and state" for the clear and specific prohibition of legislation by Congress on the subject of special government privilege to any one religion. Any power to legislate concerning the exact type of governmental privilege covered by "an establishment of religion" was left by the First Amendment, where it had been left by the original Constitution, completely in the hands of the individual states.

The essential ambiguity of the phrase, "the separation of church and state," creates an atmosphere in which the propagandist for any new and illicit interpretation of the establishment clause may more confidently hope to have the new meaning accepted as the meaning of this clause. This doubtless explains why the modern campaign for changing the Constitutional provisions for the relation of religion to government, without consulting the American people, deals, almost without exception, with the phrase "the separation of church and state" or the "wall of separation between church and state," and not with the language of the Constitution.

Probably the least illuminating (to use very mild language) statement ever written in the history of semantics is Justice Frankfurter's famous definition in the McCollum Case, that "separation means separation, not something less." I have found no one who could discover what light this statement throws on the meaning of the word "separation." Fundamentally, of course, we should not be particularly concerned about the meaning of the word "separation" in connection with the First Amendment. This word, used anywhere, can have specific meaning *only* as the specificity is given to it by its context, and since the word does not appear in the Constitution of the United States, or in the Constitution of any state, as part of the statement of the relation of government to religion, it has *no possible constitutional* meaning.

The Clash between Two Meanings

We have today, then, a clash between two positions as to what the phrase "an establishment of religion" means. The first meaning is that of the scholars of the last few centuries, Catholic, Protestant, European, and American. It is the meaning of Madison and Jefferson, and of the men of the First Congress who wrote and adopted the First Amendment. It is the meaning applied in the interpretation and application of this phrase in the Constitution by all the Presidents of the United States, by all the Congresses of the United States, and by every relevant *decision* of the Supreme Court of the United States in our history—with the single exception of the McCollum decision in 1948. However, some of the language in the *opinions* in the Everson bus case (1947) expressed the new substitute for the language of the Constitution.

The first meaning is that "an establishment of religion" means "a single monopolistic position of favor granted to one religion, or religious group, or church, by a government." The American type of separation of church and state means that that kind of exclusive arrangement of favor between the government and one religion is prohibited in this country.

The second meaning, the modern spurious meaning, of the establishment clause is commonly referred to as the Rutledge Doctrine. This doctrine was first given important expression in the dissenting opinion of Justice Rutledge in the Everson bus case. This case raised the question of the constitutionality of paying, out of public money, bus fares of students going to religious schools, in this case to Catholic parochial schools. The Supreme Court decided that the payment of such bus fares out of public funds did *not* constitute an establishment of religion, and therefore did not violate the Constitution of the United States. The dissenting opinion written by Justice Rutledge, and concurred in by Justices Frankfurter, Jackson, and Burton, contained what has come to be known as the Rutledge Doctrine. That doctrine is expressed in the following passages from that dissenting opinion.

"*The Amendment's purpose* was not to strike merely at the establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it [the purpose] was *to uproot all such relationships*. But the object was broader than separating church and state in this narrow sense. It was *to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. In proof, the Amendment's wording and history unite with this Court's consistent utterances* whenever attention has been fixed directly upon the question. . . . *The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes.* Legislatures are free to make, and courts to sustain, appropriations *only when it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observance.*" (Italics supplied.)

It is instructive to note carefully what Justice Rutledge wrote about: (1) the Amendment's wording, (2) history, and (3) the Supreme Court's previous consistent utterances. Anyone who understands the constitutional situation in which the First Amendment came into being knows that its "purpose" was to *change nothing*, but simply to make explicit what was implicit in the constitutional arrangement between the federal government and the states in the original Constitution. A glance at the language of the Amendment shows that its wording does not mention financial support or public funds. The record of history, legislative, executive, judicial, legal, from 1789 to 1947, is unanimously against the Rutledge Doctrine. Justice Rutledge gave no citation to any "consistent utterance" of the Supreme Court—for the best of all possible reasons: there never had been any.

None of the well-known proponents of the second meaning (the Rutledge Doctrine) have ever cited a single example of any other meaning of this phrase than the *first* meaning given

above in the works of Jefferson, or Madison, or in the official acts of any President, or any Congress, or in any decision of the Supreme Court, except the McCollum decision. I have been looking for such citations for some years, and have been promised some, but have never received any.

The Purpose of the Establishment Clause

There is probably no important question in American history that can be more completely and definitely determined than the question as to what is the *purpose* of the religious clause of the First Amendment. Jefferson and Madison in the correspondence that took place between them while Jefferson was our Minister to Paris, before the meeting of the First Congress, discussed the proposal to put a Bill of Rights into the Constitution of the United States. Alexander Hamilton had taken the position that a Bill of Rights should not be added to the Constitution because that Constitution created a government of delegated powers, and no power had been delegated to the federal government to deal with such matters as an establishment of religion, religious freedom, freedom of the press, etc. Hamilton contended that it was a mistake to mention these things in a Bill of Rights. His argument was that matters which the Bill of Rights failed to mention might be held to be within the power of Congress. It was, therefore, felt by Hamilton, and some others, to be safer not to have a Bill of Rights at all.

Jefferson, however, while agreeing that a Bill of Rights was not necessary, took the position, in the correspondence above mentioned, that he wanted a *text* in the Constitution by which to try future federal governments if they attempted to invade the civil liberties of the people of the states. Madison also agreed that a Bill of Rights was not necessary, but was useful if it was carefully phrased.

Madison wrote a Bill of Rights and introduced it into the First Congress of the United States, thus becoming the essential author and the official sponsor of the Bill of Rights in the First Congress. The men of the First Congress, when they took up

Madison's proposed bill, had before them various petitions and resolutions passed by the different states, many of them at the time the states ratified the Constitution. In these documents the states asked for a new amendment to the Constitution which would provide, in the words of Virginia (adopted June 27, 1788): "that no particular religious sect or society ought to be favored or established by law in preference to others." This language of Virginia was essentially followed by a number of other states. No state sent a petition or resolution that was in any important way contradictory to the position which Virginia had taken.

Madison's Meaning

Madison's understanding of the purpose and intent, the meaning, of the First Amendment can be found, of course, in any good library. It is in his letter to Thomas Jefferson dated October, 1788; it is in the private notes of his speech on the First Amendment in the First Congress (June 8, 1789); it is reported in the annals of the First Congress. All of these documents are consistent; all of them deal specifically with the meaning of the First Amendment; all of them deny the position taken in the Rutledge Doctrine.

Justice Rutledge's idea that James Madison went into the First Congress with the purpose of "establishing freedom of religion for the nation, as he had done for Virginia," and that his purpose was "to tear out the institution [of establishment] not partially, but root and branch and to bar its return forever," is historical nonsense. Madison knew that his Bill of Rights would not alter in any way the existing situation in regard to the powers of the federal government. He was simply expressing that situation in clear language. He wrote to Jefferson on October 17, 1788, that he "supposed it [a Bill of Rights] might be of use, and if properly executed could not be a disservice." He then gave a detailed set of reasons as to why he had "not viewed it in an important light."

Madison also knew that a Bill of Rights could have no effect whatever on the authority of any of the states. He knew, further, that the questions of religious freedom, and of an establishment of religion, were to remain exclusively state matters. He knew, necessarily, that his proposal would not "uproot" anything at all. Nothing anywhere, neither weeds, nor laws, nor constitutional provisions, can ever be uprooted by prohibitions of action.

In his speech in the First Congress, Madison said concerning the Bill of Rights: "I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless." The above quotations from Madison, of which Justice Rutledge omitted to use even one, are clearly not the language of a man who is leading a crusade to put new power and authority upon Congress to act for the whole nation.

Justice Rutledge referred inaccurately to Madison a number of times, as when he misstated Madison's purpose in his great *Memorial and Remonstrance* in Virginia. Also, in expounding his theory in regard to Madison's purpose in the First Amendment, Justice Rutledge quoted Eckenrode's interpretation of something Madison had said in regard to a Virginia statute as expressing Madison's purpose in the First Amendment; but the Justice refrained from quoting Madison himself in regard to what his purpose was in the First Amendment.

The idea that James Madison, in the First Amendment, was attempting to express the idea that it would be unconstitutional for the United States government to use public funds in aid of religion or religious activities "in any guise, form or degree" is quite irreconcilable with the writings and the record in office of James Madison. Not only did he state that his purpose was something very different from the Rutledge Doctrine, but the proponents of the new doctrine have not, in any of the arguments that I have been able to find, ever quoted a specific statement from James Madison that bolsters their opinion of what his purpose was.

Madison was President of the United States for eight years. Throughout those eight years his administration used government

funds in aid of religion in various ways. He had himself been a member of the joint committee in the First Congress to set up the chaplain's system in the two Houses of Congress, and throughout his administration he used funds to pay the chaplains in Congress, to pay chaplains in the Army and Navy, and to support missionaries teaching religion to the Indians. All of these are obviously the use of public funds in aid of religion and religious activities. Madison never tried to stop any of them, either by presidential order, by command as Commander-in-Chief of the Army and Navy, or by recommending to Congress new laws or new amendments to the Constitution to make impossible the use of government money in aid of religious activities. Furthermore, he was an influential citizen of Virginia for fifty years after the passage of Jefferson's Bill for Religious Freedom (which Justice Rutledge maintains contained the heart of the doctrine of the First Amendment), and throughout his long life and his interest in Virginia affairs Madison never suggested that it was wrong for Virginia to do what she was constantly doing—using public funds and public facilities and personnel in aid of religion and religious education.

In summary, it seems quite impossible for anyone who is willing to take the time to investigate Madison's record and his writings to believe that James Madison ever believed anything remotely resembling the Rutledge Doctrine concerning the First Amendment.

Jefferson's Position

In this dissenting opinion Justice Rutledge also tried to make Jefferson responsible for the Justice's illegitimate doctrine. Jefferson's record is a close parallel to that of Madison. He knew that the First Amendment did not change matters in any way. It was simply an expression of the text which he wanted, in order that future generations could read in the Constitution the limitation which the already existing constitutional situation placed upon the Congress of the United States.

Jefferson wrote voluminously on the matter of government and religion, but no supporter of the Rutledge Doctrine has ever yet quoted a clear, specific statement of Thomas Jefferson to the effect that he was opposed to the use of public funds in aid of religion or religious education. Obviously, any such position would be violently inconsistent with Jefferson's official record as President for eight years.

The Bill for Religious Freedom

Jefferson's Bill for Religious Freedom in Virginia was concerned primarily with the prohibition of state laws in regard to opinions, belief, and worship, as these matters were universally covered in laws setting up an establishment of religion. The Virginia statute had no clear reference of any kind to public monies, sectarian schools, religion in education, or the complete separation of church and state. There is nothing in the bill anywhere which justifies the claim that Jefferson was opposed to impartial government aid to religion.

The Virginia Bill for Religious Freedom enacts four things: (1) In Virginia no man shall be compelled by government to attend or support any religious worship, place, or ministry whatsoever; nor (2) be punished or interfered with by government on account of his religious opinions or belief but [on the contrary] every man shall be free [so far as the government is concerned] (3) to profess, and argue for, his religious opinions and beliefs, and (4) such activity shall in no way affect any man's civil capacities. This law "enacted" nothing else.

It should be recognized that these four provisions of the Virginia law deal with the almost universal features of an establishment. The long preamble also deals with the theories and practices of churches established by government, which make government officials the judges of the validity of religious opinions and make civil rights dependent upon religious beliefs. In this context, the first clause of the law could certainly mean that no man shall be compelled to attend or support any religious

place, worship, or ministry that is selected for his attendance and support by the government, which is the burden of the preamble. This is the meaning that best harmonizes with the context to the bill itself, the context of the times, and with Jefferson's whole record.

Jefferson as President

Thomas Jefferson was President of the United States for eight years, beginning ten years after the First Amendment became part of the Constitution. Throughout these years as President, Jefferson's administration used United States government money to aid religion in various "guises, forms, and degrees," with no protest from President Jefferson, no recommendation to Congress for constitutional or statutory changes, and no action by him as Commander-in-Chief of the United States Army and Navy to prohibit the use of government funds for religious activity in the armed forces. His administration (like that of all other Presidents for well over a century) also used government funds to support missionaries spreading religion among the Indians. When this system was changed somewhat just after 1900 it was not because the century-old practice was held to be unconstitutional.

As in the case of Madison, and in fact of every President from Washington to Eisenhower, including both of them, the record of Jefferson indicates that, if the Rutledge Doctrine has any validity, either Jefferson did not understand the meaning of the First Amendment or else he lacked sufficient integrity to live up to his oath of office to support the Constitution as President of the United States. As in the case of every President we have ever had, Thomas Jefferson had to be either ignorant or dishonest, or else Justice Rutledge has to be wrong.

Jefferson on Religion in Public Education

Jefferson was not opposed to religion, nor to religion in public

education, nor to the public support of religious activities. He recommended a school of theology for the training of clergymen in the *public* education system of Virginia. He approved rather elaborate arrangements in the University of Virginia for students of schools for instruction in religion which might be set up by the various denominations "within, or adjacent to, the precincts of the University." He wrote: "One of its [the University's] large elliptical rooms on its middle floor shall be used . . . for religious worship."

It seems quite impossible for anyone to cite Jefferson as opposed to religion in public education, or the use of impartial government aid for religion in public education, except on the basis of careful avoidance of accurate information. In the following passage on the importance of the study of religion, Jefferson was explicitly discussing public education. His position is clearly given in his statement on "Freedom of Religion in the University of Virginia" in 1822: "It was not, however, to be understood that *instruction* in religious opinions and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. *On the contrary,* the relations which exist between man and his Maker, and the duties resulting from these relations, *are the most interesting and important to every human being, and the most incumbent on his study and investigation.*" (Italics supplied.) In the same document he mentioned the danger of "permission of the public authorities to *dictate* modes or principles of religious instruction," and the danger of "giving countenance or *ascendency to any one sect over another.*" (Italics supplied.)

In 1799, eight years after the ratification of the First Amendment, and twenty years after he had written the Virginia law for religious freedom, Jefferson summed up his position in these words in a letter to Elbridge Gerry: "I am for freedom of religion and against all maneuvers to bring about a legal ascendency of one sect over another."

These two related but separate ideas of Thomas Jefferson, which run all through his discussions of the relations of govern-

ment to religion throughout his entire life, and which are totally consistent with his record as a public servant, are essentially the positions of all Americans today. Americans are apparently unanimously in favor of freedom of religion, and are opposed to the legal ascendancy of any one sect or religion over another. This is the American separation of church and state. So, in Jefferson's statement of his services to this country about 1800, he lists the following: "I proposed the demolition of the church establishment, and the freedom of religion." He does not mention the separation of church and state, or opposition to public support of religion or to religion in public education. In February, 1809, in a letter to the Methodist Episcopal Church of New London, Connecticut, Jefferson wrote: "No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of civil authority."

Jefferson's Wall of Separation

In Jefferson's letter to the Baptists of Danbury, Connecticut, in which he used the figure of speech, "a wall of separation between church and state," he was again discussing "the rights of conscience." This little letter of courtesy written to the Danbury Baptists on January 1, 1802, will not bear the burden put upon it by the Justices of the Supreme Court and the other proponents of the Rutledge Doctrine. The sentence from which this figure of speech is taken is proof that President Jefferson could not have been thinking about a wall of any kind, high or low, pregnable or impregnable, which had any relation whatever to most of the matters mentioned in the elaborate rewriting of the first clauses of the First Amendment in Justice Black's dictum in the Everson case, or to the still greater burden put upon it in the Justices' opinion in the McCollum case a year later. In the McCollum case, the Rutledge Doctrine was essentially accepted by the Supreme Court of the United States as the meaning of the establishment clause. Jefferson's whole sentence reads as follows: "Believing with you that religion is a matter which lies solely

between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and state."

Jefferson's next sentence, *never quoted by the proponents of the Rutledge Doctrine,* so far as I have been able to discover, reads as follows: "Adhering to *this expression of the supreme will of the nation in behalf of the rights of conscience,* I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties." (Italics supplied.)

Jefferson, of course, was thoroughly familiar with the constitutional relations between the states and the nation and the nature of the federal government set up by the Constitution of the United States. He knew, therefore, that the First Amendment had no relation to state activity of any kind, and that any wall of separation between church and state in the Constitution could only be a wall of separation between the federal government and religion.

Further, it is evident from Jefferson's voluminous writings that he understood perfectly well what the phrase "an establishment of religion" meant and, therefore, it is clear that in writing the above he meant that the wall of separation prevented a monopolistic union between the federal government and any one religion. This, of course, was a step "in behalf of the rights of conscience." It seems obviously improper to attempt to draw from this letter any indication that Jefferson was discussing the constitutionality, or the wisdom, of state action in regard to religion in education, the health, and safety of children (as involved in bus rides, school lunches, etc.) or any other of the conditions governing religion and education in the states. He was simply expressing his universal opposition to an establishment of religion in the United States of America and to federal interference with

religious liberty. He was referring to a wall which made it impossible for the federal government ever to pass a law which created an establishment of religion for the United States of America to take the place of the dying establishments in the states.

The Attitude of Congress

The First Amendment became binding on Congress when it became a part of the Constitution of the United States in 1791. If the Rutledge Doctrine is correct (that any support of religion is an establishment of religion), then it follows inevitably that every Congress that has ever sat in the history of the United States has passed unconstitutional laws. Not only that, but every Congress has put unconstitutional laws on the statute books without any protest from any President of the United States, and without anyone ever taking such violations of the Constitution to the Supreme Court for adjudication. The only decision in the history of the Supreme Court that upholds the Rutledge Doctrine is the McCollum decision, and that dealt with the state law and not a law by Congress.

Not only has Congress never put the Rutledge Doctrine into practice in its legislation, but Congress has refused some twenty times to take the first step necessary to allow such a doctrine to be explicitly expressed in the Constitution of the United States. Congress having refused some twenty times to adopt the principle of the Rutledge Doctrine, that the support of any religious activity by Government funds constitutes "an establishment of religion," the Supreme Court of the United States is now saying this idea has become a great constitutional principle! If refusing to put a principle into the Constitution makes it a great constitutional principle, then the formal adopting of a section ought to exclude it from the Constitution, according to this new theory of how constitutional principles are born in a democracy.

While the Bill of Rights expressed only limitations upon the power of the federal government, the Fourteenth Amendment, put into the Constitution in 1868, provided, among other things, that no state shall "deprive any person of life, liberty, or property, without due process of law." In 1925, fifty-seven years after the Fourteenth Amendment became part of the Constitution of the United States, the Supreme Court for the first time *assumed,* in the famous Gitlow case, that the words "liberty without due process of law" in the Fourteenth Amendment were a restriction on state legislatures preventing them from invading the fundamental personal rights and liberties which were protected by the First Amendment from abridgement by Congress. This was not a statement that the First Amendment, or the Bill of Rights, had been transferred by the Fourteenth Amendment, or absorbed into it, to constitute restrictions on the several states. The Court's position was only that certain basic freedoms, long protected by the First Amendment from invasion by Congress, were now protected by the Fourteenth Amendment from invasion by the states.

Under this doctrine of the Gitlow case the Supreme Court has frequently settled questions involving state action in the area of freedom of religion, freedom of speech, freedom of the press, etc. In these cases the liberty alleged to have been violated has been held to be some fundamental freedom "implicit in a scheme of ordered liberty." The Court frequently uses this phrase and holds that *these freedoms* are protected by the phrase "liberty without due process of law" in the Fourteenth Amendment from interference by the state.

In fact, in the case of *Adamson vs. California,* June, 1947, the Court refused to accept the doctrine, urged by Justice Black in a long and detailed argument, that the Fourteenth Amendment made the whole Bill of Rights into restrictions on the individual states as it is on the federal government: "To guarantee that hereafter no State could deprive its citizens of the privileges and protections of the Bill of Rights." This the Court

declined to accept as the effect of the Fourteenth Amendment. Justice Reed, speaking for the Court, said: "The due process clause of the Fourteenth Amendment, however, does not draw all of the rights of the Federal Bill of Rights under its protection. . . . Nothing has been drawn to our attention that either the framers of the Fourteenth Amendment or the states that adopted it intended its due process clause to draw within its scope the earlier amendments to the Constitution. Palko [vs. Connecticut, 1937] held that such provisions of the Bill of Rights as were 'implicit in the concept of ordered liberty' became secure from state interference by that clause. But it held nothing more." In a concurring opinion Justice Frankfurter emphatically rejected the idea that "the Fourteenth Amendment was a shorthand summary of the first eight amendments," and that "due process incorporated those eight amendments as restrictions upon the powers of the states."

It seems clear that the only way in which the Supreme Court of the United States could deny the validity of any state law on the basis that it was creating "an establishment of religion" would be to hold that the state action under consideration interfered with some fundamental freedom implicit in "a scheme of ordered liberty." Holding otherwise would be to go against the entire history (up to the McCollum Case, 1948) of relevant Supreme Court decisions, beginning with the Slaughter House cases, 1873, that *the privileges and immunities* of the Fourteenth Amendment were only those which owed their existence to the federal government—not those that derived from state governments; or else such a holding would go against a still more specific line of decisions beginning with the Gitlow decision, 1925, that only *the fundamental freedoms implicit in a scheme of ordered liberty,* which were protected by the First Amendment from invasion by Congress, were protected by the Fourteenth from invasion by the states.

In the McCollum case in 1948, the Supreme Court did not explain how they had applied the First Amendment to the action in Champaign, Illinois. The Court simply proclaimed that the

released-time scheme in Champaign constituted "an establishment of religion." The program of released time in the public schools of Champaign operated under the laws of Illinois, was upheld by the trial courts of Illinois, and by the Supreme Court of the state. It was approved by the state educational machinery, the local board of education, the parents of over 120 children involved in the program. This program was objected to by the parents of one child who was not in the program. Under these circumstances it is not difficult to understand why no Justice of the Supreme Court has ever attempted to explain how such a program violated "the fundamental freedoms implicit in a scheme of ordered liberty."

State Action

The record of the individual states show quite clearly the total absence of any American practice or tradition which conforms to the Rutledge Doctrine. Every state from its beginning has used (and uses today) state-supported facilities and personnel operating in aid of religion and religious education. Not all of them do it in every conceivable way, but they all do it. A recent bulletin of the National Education Association lists fourteen different ways in which states do, or may, give aid, in their phraseology, "to sectarian schools or to sectarianism in public schools." And the substantially universal and most important way in which government aid is given to religion and religious education by the states, tax exemption, is not included. Every state employs a number of these fifteen ways of public assistance to religion or religious education, and the majority of the states permit a majority of them.

Protestants Protest the McCollum Decision

In June, 1948—three months after the McCollum decision—a group of some twenty-five leading Protestant ministers and educators issued a statement of protest against the McCollum

decision as formulated by the Supreme Court. Among the signers of this statement we find the names of Bishop James T. Baker, Professor John C. Bennett, Dr. Lynn Harold Hough, Dr. Henry Smith Leiper, Bishop Francis J. McConnell, Professor Reinhold Neibuhr, Right Reverend Angus Dunn, Dr. Harry Emerson Fosdick, Dr. Charles W. Gilkey, Professor Justin Wroe Nixon, Professor Liston Pope, Right Reverend Edward L. Parsons, and Reverend Henry P. Van Dusen.

In *Christianity and Crisis,* July 5, 1948, this statement of the Protestant leaders was introduced by a comment headed "The New Conception of Separation." This comment said that the "Supreme Court extended the meaning of the original conception of 'separation' in a most fateful way when it moved from the mere prohibition of an establishment of religion to the exclusion of all cooperation between the State and the various religious bodies even when such cooperation does not give any of them an advantage over others."

The heart of the Protestant statement is as follows: "We favor the separation of Church and State in the sense which we believe to have been intended in the First Amendment. This prohibited the State from giving any Church or religious body a favored position, and from controlling the religious institutions of the nation. We contend that Jefferson's oft-quoted words, 'wall of separation,' which are not in the Constitution but which are used by the Court in the interpretation of the Constitution, are a misleading metaphor. *Cooperation entered into freely by the State and Church and involving no special privilege to any Church and no threat to the religious liberty of any citizen* should be permitted. As Protestants we desire to affirm this interpretation of the American doctrine of the separation of Church and State, and to protest against the interpretation that has been formulated by the Supreme Court." (Italics supplied.)

Catholic Bishops Do the Same

At the annual meeting of the Catholic bishops of the United

States in Washington in November, 1948, they considered the same matter and expressed themselves in language almost identical with that of the Protestant leaders of the previous June. The Catholic statement read: "In regard to the establishment of religion clause, there is no doubt of the intent of the legislator. It is clear that the record of the Congress that framed it and of the state legislatures that ratified it. To them it meant no official church for the country as a whole, no preferment of one religion over another by the federal government—and at the same time no intereference by the federal government in church-state relations of the individual states. The opinion of the Court advances no reason for disregarding the mind of the legislator. But that reason is discernible in a concurring opinion adhered to by four of the nine judges. There we see clearly the determining influence of secularist theories in public education—and possibly of law. One cannot but remark that if this secular influence is to prevail in our government and its institutions, such a result should in candor, and logic and law, be achieved by legislation adopted after full popular, ideological interpretation of our Constitution. We, therefore, hope and pray that the novel interpretation of the First Amendment recently adopted by the Supreme Court will in due process be revised. We feel with deep conviction that for the sake of both good citizenship and religion there should be a reaffirmation of our original American tradition of free cooperation between government and religious bodies—*cooperation involving no special privilege to any group and no restriction on the religious liberty of any citizen.* We solemnly disclaim any intent or desire to alter this prudent and fair American policy of government in dealing with the delicate problems that have their source in the divided religious allegiance of our citizens." (Italics supplied.)

I think it should be noted as something thoroughly unhealthy, and to be deplored by all good citizens, that those who have harshly criticized the bishops' statement as a Catholic attack on the Constitution or on the Supreme Court, have refrained from any similar criticism of the Protestant statement. There have been

occasional slighting references to the statement of the Protestant leaders—like that of the *Christian Century,* "Protestants Take the Catholic Line"—but no bitter denunciation. While anti-Protestantism would be on the identical ethical level as anti-Catholicism, it is obviously not held to be as effective with the gullible and the uninformed as anti-Catholic prejudice and misrepresentation for use in the interpretation of constitutional language. There is no parallel in the treatment of the Protestant and Catholic statements by such writers as Mr. Blanshard, Dr. Moehlman, Professor Nichols, and Dr. Pfeffer.

The Protestant leaders, in defining the American doctrine of the separation of the church and state as "involving no special privilege to any church and no threat to the religious liberty of any citizen," and the Catholic hierarchy in using almost identical phraseology—"no special privilege to any group and no restriction on the religious liberty of any citizen"—were both expressing the original, historical, scholarly, total meaning of the religious clause of the First Amendment, and both were proclaiming their complete loyalty to this constitutional arrangement.

4.

Catholics and the American Doctrine

ALL AMERICANS, including all American Catholics, so far as I have been able to discover, believe in the American doctrine of the separation of church and state. Yet the absence of this belief on the part of Catholics seems to be the basic assumption of all the current publications and speeches attacking the loyalty of Catholics as American citizens. And not one of the attackers has ever to my knowledge cited a single Catholic spokesman, clerical or lay, in support of his assumption.

Religious Bias in Interpreting the Constitution

Commonly, the precise point of attack on American Catholics as citizens is that they do not, and cannot, believe in the "constitutional principle of separation of church and state." This charge, if it has any discoverable and specific meaning, must mean that American Catholics do not believe in or support the constitutional provisions for the relation of government to religion in this country as expressed in the Constitution of the United States and in those of the several states, especially as stated in the religious clause of the First Amendment to the Constitution.

The attempt of various writers to defend the indefensible Rutledge Doctrine of the meaning of the "establishment clause" has two outstanding characteristics: first, the necessary lack of valid material in history, biography, law, language, and logic; and, second, the frequent reliance on religious prejudice, as a substitute for evidence, to promote a new and spurious "interpretation" of *language* in the Constitution.

The way in which the controversy concerning the meaning of the First Amendment has been thrust upon Catholics is the attempt to use anti-Catholic misunderstanding and suspicion by

a number of propagandists for the new and false interpretation "*complete* separation of church and state," or the "high and impregnable wall of separation." This is true of Mr. Blanshard, Professor Nichols, Dr. Moehlman, Dr. Pfeffer, and others. Any expression by a Catholic of acceptance of the original and historical meaning of the First Amendment—the only meaning that the American people have ever adopted—is frequently characterized by these writers as a Catholic attack on the Constitution. And they go on from there to build up a fictitious case against Catholics, especially the Catholic bishops, as anti-American, anti-civil liberties, seeking to destroy the Constitution. Certainly the current acceptance of Jefferson's and Madison's interpretation of the religious clause of the First Amendment is in no way confined to Catholics. As has been shown, many of the most distinguished Protestant leaders in America take the same position.

In his *American Freedom and Catholic Power,* Mr. Blanshard is primarily attacking the Catholic bishops of America as the enemies of American freedom, in that they do not believe in the constitutional provisions for the separation of church and state. He states early in his book that wherever possible he allows the bishops to speak for themselves; then he carefully avoids carrying out this promise throughout his book. Nowhere does he quote a single American bishop in support of his fundamental thesis. He does quote one, Archbishop McNicholas, but in opposition to his position, and only in part—and dismisses the statement as "ecclesiastical double-talk." If Mr. Blanshard had made even a superficial investigation of the position of the Catholic bishops of America from the beginning to the present day, he had to know that his thesis was false.

The Catholic Record

Father John Carroll, later the first Catholic bishop and archbishop in the United States, began in 1787 the long line of fervent statements by the American hierarchy in the support of the American separation of the church and state. Father John Tracy

Ellis, Professor of Church History at The Catholic University of America, in *Harper's Magazine* for November, 1953, marshals statements from the leaders of the Catholic hierarchy in this country from 1787 to 1948, during which period there have been more than 500 Catholic bishops. This article demonstrates that the American type of separation of church and state has had the support of the Catholic hierarchy down through the generations of American history. Father Carroll wrote in 1787: "Thanks to a genuine spirit of Christianity, the United States have banished intolerance from their system of government, and many of them have done the justice to every denomination of Christians, which ought to be done to them all, of placing them on the same footing of citizenship, and conferring an equal right of participation in national privileges."

John England, first Bishop of Charleston, and often referred to as Carroll's successor as the leader of the American hierarchy, said in 1824: "May God long preserve the liberties of America from the union of any church with any state. In a country, with any religion, it is an unnatural increase of the power of the executive against the liberties of the people." This is only one of a long number of Bishop England's emphatic statements in support of the American system.

In 1841, John Hughes, fourth Bishop and, later, the first Archbishop of New York, spoke of "the justly obnoxious union of church and state," stating that "there is nothing which every patriot should feel to be a more imperative duty than to resist to the uttermost any attempt to introduce measures tending toward so disastrous a result" as "the union of church and state."

In 1843, Bishop Hughes said in a speech in New York City: "I regard the Constitution of the United States as a monument of wisdom, an instrument of liberty and right, unequaled—unrivaled—in the annals of the human race." And again: "What I regard as the wisest of all is the brief, simple, but comprehensive declaration that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' "

Cardinal Gibbons, speaking in Rome in 1887, said: "For myself as a citizen of the United States, without closing my eyes to our defects as a nation, I proclaim, with a deep sense of pride and gratitude, and in this great capitol of Christendom, that I belong to a country where the civil government holds over us the aegis of protection without interfering in the legitimate exercise of our sublime mission as ministers of the gospel of Jesus Christ."

Writing in the *North American Review* in 1909, Cardinal Gibbons also said: "American Catholics rejoice in our separation of church and state; and I can conceive of no combination of circumstances likely to arise which would make a union desirable either to church or state. We know the blessings of our present arrangement; it gives us liberty and binds together priests and people in a union better than that of church and state. Other countries, other manners; we do not believe our system adapted to all conditions; we leave it to church and state in other lands to solve their problems for their own best interests."

Bishop John J. Keane (at one time Rector of The Catholic University of America and also at one time Archbishop of Dubuque) wrote in the *Catholic World* for March, 1898, concerning his conversation with Catholics in Europe: The Europeans "have been used to either Church establishment or Church oppression, Church patronized or Church persecuted. A condition in which the Church neither seeks patronage nor fears persecution seems to them almost inconceivable; and when our American assures them that such is the condition in his country, they think him more than ever a dreamer. They cannot imagine a separation of church and state which means simply that each leaves, and is bound to leave, the other free and independent in the management of its own affairs; each, however, respecting the other and giving the other moral encouragement and even substantial aid when circumstances require and permit."

In 1947, Archbishop Richard J. Cushing of Boston spoke of recent attacks on Catholic loyalty. He said that the critics of the Church in the matter of church and state "claim that 'Catholic

principles are at a variance with those of the American people.' Well, first let it be said that Catholics are also among the American people. Catholics, we have already said, have gained as much from the American system as have their neighbors, and have given the defense of that system the full share of brain and brawn and blood." Archbishop Cushing then quoted Cardinal Gibbons in the passage just mentioned and concluded: "So spoke in his day Cardinal Gibbons. So do we speak in our day."

In 1948, John T. McNicholas, Archbishop of Cincinnati, wrote: "No group in America is seeking union of church and state; and least of all are Catholics. We deny absolutely and without any qualification that the Catholic bishops of the United States are seeking a union of church and state by any endeavors whatsoever either approximate or remote. If tomorrow Catholics constitute a majority in our country, they would not seek a union of church and state. They would then, as now, uphold the Constitution and all its amendments, recognizing the moral obligations imposed on all Catholics to observe and defend the Constitution and its amendments."

Finally, in November, 1948, the Catholic bishops of the United States, after their annual meeting in Washington, issued the statement quoted above, in which they endorsed without qualification the clear and complete statement of the American type of separation of church and state: "No special privilege to any group and no restriction on the religious liberty of any citizen."

Of course, bishops and archbishops are not the only Catholics in America who have spoken on or written about the religious clause of the First Amendment. Father John O'Brien of Notre Dame University, writing in the *Christian Century* of May, 1948, endorses this situation at length, and says at one point, "Never have I heard a Catholic question it." I can join Father O'Brien in this remark. I have heard the relations of government and religion in the United States discussed in many conferences, and have had private talks in regard to it with a number of the most distinguished scholars and theologians, including bishops, in

America. I know of no Catholic in America who questions or opposes the American type of separation of church and state. The evidence seems to be overwhelming that American Catholics, clergy and laity, have always been in complete agreement in regard to the support of the American doctrine as expressed in the First Amendment.

Professor Nichols Omits the Truth

Professor James Hastings Nichols of the University of Chicago, in the sections of his *Democracy and the Churches* which touch on Catholicism, has written what is probably the most completely false, thoroughly unsupported, and insulting attack upon American Catholics, as citizens of this republic, that has ever been expressed in equal space. He writes: "How then shall we understand the ignorance of American Catholic laity and of Al Smith as to their duties to oppose the American constitutional system? Much of the answer lies in certain principles and procedures of the confessional. . . . If Al Smith had won the election, it would then have been his confessor's duty to inform him of what Rome required of him, even at the risk of leading Mr. Smith into intolerable tensions and probably mortal sin. It is on these highly rationalized principles that the Catholic population in a liberal democratic country are left with a minimal sense of obligation to such political principles as are taught in Rome, until they are in sight of the power to put them into effect."

As an associate professor on the theological faculty in a distinguished university, Dr. Nichols ought to have known that the Catholic Church does not teach "political principles."

Again: "The Vatican, of course, has never concealed its desire to change the American Constitution in this regard to a regime of Roman privilege and official intolerance. The American laity and even prelates, however, continued through the '30's to dissimulate on this matter. In public such heretical manifestos as Al Smith's *Credo of an American Catholic* were allowed to pass without conspicuous rebuke, while in its school system

the hierarchy was laboring to bring the laity to the official line . . ."

"The Catholic citizen," he insists, "like the Soviet citizen, is expected to acclaim a party line," and he refers to the bishops as the "political bosses" of "modern Catholics." He speaks of "the Holy See as the government of all Catholics" and terms the Pope the "political sovereign over American and other Catholics. . . . The chief political device that is unique to the Roman Church is, of course, the confessional . . . in a Catholic country confession spoils all its machinery, for it destroys the independence of the electors, of representatives, of functionaries, and of the sovereign . . . in a Catholic population there is no such thing as a secret ballot."

Whatever Professor Nichols means by what he calls "the general Catholic policy in America of living in a self-imposed cultural ghetto" is not clear, although he "explains" that it is due to the preference of the clergy "to constrict American Catholics into colonies, chiefly in the large cities of the Northeast, in which they could enjoy a theocratic clerical rule and from which they could make demands and sorties on the larger State and culture."

Professor Nichols also writes the following startling statement: "At the behest of the American prelates, President Roosevelt and the Congress agreed to starve the Spanish Republic of the war materials necessary to defend itself against the Axis powers." In speaking of the "present Roman Catholic crusade against Communism," he writes that "politically speaking this is a family row. Natural affinity may yet one day unite these two most deadly enemies of man."

Mr. Nichols proves none of his insulting charges against his Catholic fellow citizens. In fact, he makes no attempt to prove them. In one place he mentions the fact that dependable evidence is not available in regard to the infiltration of the foreign service of the United States by Catholics, in which they work constantly against the principles of democracy. Having no evidence, he goes ahead and publishes this insulting charge just as calmly as

though he had dependable evidence that there was some truth in it.

Professor Nichols' alibi-in-advance in his preface is that his "analysis" of the relations between religion and politics "will carry a high emotional voltage" and that he "doubts the value of a neutral objectivity in such matters." But Dr. Henry Sloane Coffin, of the committee which selected Dr. Nichols to do this "study," writes in a Foreword: "We wished an objective [*sic*] statement in these matters," and that the committee procured for Dr. Nichols "sufficient leisure from teaching to do a thorough piece of scholarly [*sic*] work." Dr. Coffin remarks further: "The churchmen who were interested in the preparation of this volume were, in the course of time, organized as the Committee on Religious Tolerance" [*sic*].

I have not seen any repudiation of Dr. Nichols' book as a betrayal of the purpose of the committee, or any rebuke of Dr. Nichols for using his leisure for going off on a debauch of "high emotional voltage" instead of doing "a thorough piece of scholarly work." I believe that anyone—Catholic, Protestant, or Jew —who will make an honest and competent investigation will be forced to conclude that Dr. Nichols is guilty either of irresponsible and unscholarly avoidance of the truth or else of deliberate design to publish known untruth.

Dr. Pfeffer Confuses Religion and Semantics

Dr. Leo Pfeffer, Associate General Counsel of the American Jewish Congress, published an article in the Autumn, 1951, issue of the *Chicago Law Review,* entitled "Church and State—Something Less Than Separation," attacking the ancient, standard, regular, scholarly meaning of the establishment clause of the First Amendment. He attempts to defend the Rutledge Doctrine as put into effect in the McCollum case by the Supreme Court. He even refers to this a number of times as the *definitive* interpretation. The point at issue in Dr. Pfeffer's article, as was the point of issue in the McCollum case, is the meaning of the estab-

lishment clause. The *meaning* of any phrase which is part of an historical document can be determined *only* by investigating the sense in which the phrase was used by the men who used it. Its meaning, its purpose, its intent, could be found nowhere else. The purpose of language used anywhere *with a purpose* has to be in the mind of the person using the language.

As did the Supreme Court in the McCollum case, Dr. Pfeffer avoids discussing the evidence abundantly available to indicate the purpose and meaning of the establishment clause. Instead of making a scholarly effort to determine the meaning of this language. Dr. Pfeffer uses frequently, and inaccurately, references to Catholic principles, persons, and historical facts and law cases involving Catholics. Even if Dr. Pfeffer's use of material drawn from the field of religion were informed and accurate, it could have no possible legitimate bearing on the *meaning* of language in the Constitution.

In his attempt to carry out the idea that opposition to the application of the Constitution in the McCollum decision is primarily a Catholic opposition, he writes passages that are replete with errors. He unjustifiably makes remarks about "Catholic spokesman," "sectarian circles," the "support" of the Catholic Church, the "position" of the Catholic Church, and comments on the cases of *Bradford vs. Roberts* and *Quick Bear vs. Leupp,* both of which involved Catholic institutions. In all these instances, Dr. Pfeffer's remarks are erroneous, rest on assumptions contrary to fact, and are completely irrelevant to the meaning of a clause in the Constitution.

He does me too much honor in referring to the regular, constant, historical interpretation and application of the establishment clause, by all Presidents, all Congresses, the leading scholars of Constitutional law, the Founding Fathers, Madison and Jefferson, and all the relevant Supreme Court decisions except the McCollum decision, as "the O'Neill thesis"! I must decline the honor. It is plainly, specifically, the thesis of James Madison and his colleagues and successors, and their claim antedates mine by a number of years. In this article, Dr. Pfeffer mentions the

O'Neill thesis, the O'Neill school, or the O'Neill theory no less than thirty-nine times, emphasizes again and again that I am a Catholic, and makes me a "spokesman" for the Church.

The heart of Dr. Pfeffer's article is contained in the following passage: "Although rejected by the court, the O'Neill thesis found ready acceptance in sectarian circles and marked the basis of an all out effort to persuade the American people and ultimately the courts that separation does mean something less. The leadership in this attack has been taken and has been retained by the Catholic Church. Indeed, it is not unfair to say that the O'Neill thesis is the official position of the Catholic Church. At least it is the position asserted in a statement by the American hierarchy."

Dr. Pfeffer's remark about the "leadership" of the Catholic Church in this matter is quite absurd. Throughout American history there must have been scores of Protestants to one Catholic who have taken the exact position taken recently by both Catholics and Protestants. The heart of the statement of the American hierarchy in 1948, to which he apparently refers, followed, after an interval of five months, the statement of twenty-five distinguished Protestant leaders, in almost identical language. Dr. Pfeffer must have known of this, since the Protestant statement was given wide publicity in the summer of 1948. Why not talk about Protestant leadership? The Protestant leaders scooped the Catholic leaders by five months.

Dr. Pfeffer certainly should know that the Catholic Church has no "official" position on the *meaning* of this language. The position of the American hierarchy is simply the position of scholars in general, and the position of American officials, legislative, executive, and judicial, from 1789 to 1948. His implication that I was, or am, a spokesman for the hierarchy, or the Church, is wholly baseless. It seems to indicate that he believes that I made a false statement in the preface of my book which he was discussing, when I wrote that I was not representing "any organization or group with which I was in any way affiliated." So far

as I know, no member of the hierarchy knew of my book until after it was published.

Clearly, neither Dr. Pfeffer's religion nor mine can have any bearing on the meaning of the establishment clause. There is no contest between Catholics and non-Catholics in regard to the meaning of this language. Informed Catholics and informed non-Catholics, students of constitutional law and American history, seem to agree with James Madison in regard to the purpose and application of this part of the Constitution from 1791 to 1948.

If Dr. Pfeffer should wish to discuss the theological doctrine of the Catholic Church in regard to the relation of the temporal to the spiritual, he should study the subject before he writes about it. That would doubtless keep him from some of his mistakes; reading some of the Catholic bishops and other Catholic scholars would keep him from other blunders. For I do not think that Dr. Pfeffer is a victim of bigoted thinking. He is simply an uninformed enthusiast for a thesis that is not susceptible of proof.

In the *Buffalo Law Review* for Spring, 1953, Dr. Pfeffer and I had a debate on the meaning of the establishment clause. Here the basic argument he presented was simply a sweeping assertion, which he assumed (with no evidence whatever presented to support it) and which was the equivalent of his side of the debate.

One of Dr. Pfeffer's strange remarks was: "No effort will be made to present the affirmative argument in support of the principle of complete separation. They are fully set forth in the Supreme Court decisions in which the O'Neill thesis was considered and rejected." He evidently meant the *single* Supreme Court decision, not Supreme Court decisions. The McCollum decision is the only decision in the history of the Supreme Court which takes the attitude toward the establishment clause which underlies the Rutledge Doctrine. Of course, anything like "complete separation," whatever it may be held to mean in any particular situation, was not before the Court, and the Court, therefore, made no *decision* about it. The situation that was before the Justices, and the only situation upon which the Court made any

decision, was the "released time" program as found in the public school system of Champaign, Illinois.

It is unfortunate that Dr. Pfeffer did not attempt to set forth any argument which he could find in the decision of the Court in support of the constitutional meaning which they gave to the establishment clause. Any argument which the Court expressed or implied in regard to the *wisdom* of whatever they mean by "complete separation" of church and state has no bearing on whether the practice they were passing on was constitutional. The wisdom of such measures in this country is supposed to be the problem of legislatures and Congresses, not of the courts. It seems strange indeed that a lawyer trying to promote a new meaning for the establishment clause—one that had essentially never been heard of in American history before the present decade—did not present any affirmative arguments he knew about in support of that meaning, instead of trying to rest on elaborate and erroneous references to Catholics and the Catholic Church which necessarily could have no possible legitimate bearing on his problem.

His fundamental technique was the old fallacy of "begging the question," that is, assuming what should be proved, and offering evidence and argument for non-controverted aspects of the problem. This basic assumption was expressed by Dr. Pfeffer in the following assertions:

". . . the conceptual foundation of the relationship between church and state instinct in the Constitution and the First Amendment [was] the inherent incapacity of political government to concern itself with religious matters."

". . . the generation which adopted the Constitution and the Amendment was committed to the proposition that excluded from the powers delegated to the political state was any power over religion."

". . . the principle that religion was beyond the delegated jurisdiction of political society."

". . . The concept that religion was outside the ken of political society . . ."

However, Dr. Pfeffer apparently was aware that the First Congress, as soon as it had adopted the Bill of Rights, began legislating on matters of religion: chaplains for both houses of Congress, and for the armed forces, a day of prayer and thanksgiving. Further, he seems to have known that all Congresses and all Presidents in our history have kept up this activity. And so Dr. Pfeffer included the following concession to facts that cannot be hidden: "Of course, in view of the complexity of human institutions, endeavors and motivations, complete government non-cognizance of religion is impossible practically; but as far as is possible and practical, the mandate of the First Amendment required the Government to be religion-blind." In other words, the realities of political government make sheer nonsense of Dr. Pfeffer's basic assumption—without which he has no case. Why he wished to assume that there is "instinct in the Constitution and the First Amendment" a proposition that it is "impossible practically" to carry out is hard to understand.

What has so confused Dr. Pfeffer here is doubtless the well-known fact that Mason, Hamilton, Jefferson, and Madison (and probably many others of the time who were familiar with the Constitution) knew that the Constitution had not delegated to *Congress* (not to political government), but had reserved to the people of the states (as *expressed,* not created, in Articles IX and X of the Bill of Rights), any authority to make laws for or against "an establishment of religion" or limiting the fundamental freedoms of religion, press, speech, and assembly.

A search through Dr. Pfeffer's part in this debate for fragments that he might have assumed bolstered up his admittedly impractical theory can be found the following: Quotations about, or references to, "power over religion," "jurisdiction of the magistrate . . . extended to the salvation of souls," "religion . . . resigned to the will of society at large," "the magistrate's power extends not to the establishing any articles of faith or form of worship, by force of laws," "to meddle with the private opinion of the people," "to erect human tribunals for the conscience of

men," "to intermeddle with the subject of religion," and "religion was a private matter."

I submit that none of these expressions is relevant to this discussion. Certainly, the scholars, legislators, executives, and judges who have interpreted, observed, and applied the establishment clause of the First Amendment were not endorsing or administering jurisdiction over the salvation of souls, the conscience of men, private opinions, articles of faith, or forms of worship; nor were they "intermeddling" with religion. Tax-exemption of churches, synagogues and other religious property, bus fares to pupils of religious schools, compulsory school laws applicable to pupils in religious schools, school lunches, free textbooks, and other aids of government to religion in "various guises, forms and degrees," under the federal government and that of all of the states, are not instances of any of the things indicated by these expressions.

The fragment of a sentence which Dr. Pfeffer quotes from Madison's *Remonstrance* which he uses in his *Chicago Law Review* article, "religion is wholly exempt from its [government's] cognizance," is taken from Madison's first paragraph, which is his amplification of his first reason against the bill to establish the Christian religion in Virginia: "Because we hold it for a fundamental and undeniable truth, 'that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force of violence.' " The whole sentence reads: "We maintain therefore that in matters of religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance." Here Madison is clearly developing his idea that "the duty we owe to our Creator and the manner of discharging it may not be directed by force and violence, through Civil Society's taking 'cognizance' of it." Madison was a lawyer; he was fighting a proposed law, and paving the way for Jefferson's great Bill for Religious Freedom. Dr. Pfeffer is also a lawyer. I think he should have recognized that in the circumstances under which Madison wrote his *Remonstrance* he was using the

word "cognizance" in its meaning *in law*. That is, according to Webster, "A. Jurisdiction, or the power given by law to hear and decide controversies. B. The judicial hearing of a matter." Madison was here saying that he held it for a fundamental and undeniable truth that government should not take jurisdiction over religion to direct it by force and violence. Dr. Pfeffer and I, and probably all American Catholics, and all American Protestants and Jews, believe the same thing. As already shown, Madison's writings and his whole official record in public life demonstrate that he never believed that a government could not make any laws referring to religion. He helped make such laws for years both in Congress and as President of the United States, and never protested against them in Virginia in his fifty years as a citizen after the date of the Remonstrance and Bill for Religious Freedom.

Probably Dr. Pfeffer's most fantastic interpretation of the establishment clause is: "This language carried with it a prohibition almost unlimited in scope. It was, in substance, Pinckney's proposed ban on any law 'on the subject of religion,' or Charles Livermore's proposed First Amendment—approved at one time in the House—'Congress shall make no law touching religion.' " How Dr. Pfeffer came to believe that so literate a legislator as James Madison came to use, or to accept, the phrase "an establishment of religion" as meaning the same as "religion" he does not explain. Nor does he tell us why, if that is what Congress meant, *in substance,* they did not say so *in words* by adopting the language of Pinckney or Livermore. And why a prohibition of laws on a specific subject constitutes "a prohibition almost unlimited in scope" is not divulged. That anyone who has read as much of early American history as Dr. Pfeffer evidently has could think that Madison, after his years of contesting against an establishment of religion (but not against religion), could believe that "an establishment of religion" meant simply "religion" seems to be quite incredible. Does Dr. Pfeffer actually believe that when Jefferson wrote that he "proposed the demolition of the church establishment" (which was necessarily in Virginia "an establish-

ment of religion"), Jefferson was trying to say that he had "proposed the demolition of religion"?

Dr. Moehlman Selects Some Views

Dr. Conrad H. Moehlman's *The Wall of Separation Between Church and State* is advertised on its jacket in the following words: "The author is at pains to outline the historic position of the Roman Catholic Church and to point out how radically different is the American interpretation as embodied in the Constitution and decisions of the Supreme Court. He sees in the criticisms by the Roman Catholic authorities of the Supreme Court decisions an attempt to change the traditional American theory and practice so as to conform more nearly to the Roman Catholic position."

In this statement the word "decisions" should, of course, be in the singular, since the only decision in the history of the Supreme Court which relies on the Rutledge Doctrine as a permissible constitutional position is the McCollum decision. On the validity of that decision or on the meaning of the establishment clause the Catholic Church obviously has no position. The criticisms of Catholic authorities are identical with the criticism of non-Catholic authorities.

Another part of the jacket advertisement, referring to "The American Catholic Bishops and particularly such spokesmen as Professor J. M. O'Neill," reports that "These leaders say we are misinterpreting the intentions of Jefferson, Madison and the founding fathers—as ratified by the American people—when we hold that the first clause of the First Amendment means separation of church and state. They say the true meaning of that clause is equal and just monetary gifts to all the American churches."

Both statements in the above passage are false. Of course the First Amendment means a certain type of separation of church and state—the American type—but it does not mean the Rutledge Doctrine of "complete and permanent separation of the

spheres of religious activity and civil authority," and Dr. Moehlman's position that it does is unsupported by any evidence that will stand up under examination.

My position, misrepresented by Dr. Moehlman throughout his book, is and was, as given explicitly in the preface of the book he was discussing (there is not a sentence in the book inconsistent with this statement of purpose): "In this book I am not arguing for federal aid, or other public aid, to parochial schools; I am not trying to justify Mr. Taylor's appointment to the Vatican; I am not defending religious education or released time. The wisdom or unwisdom of any of these is irrelevant to the question of whether a state or federal law providing for them violates the Constitution of the United States. My position is that these are all debatable questions on which Americans differ with complete propriety; that they should be debated, cordially, factually, and decided by our democratic procedures; and that all Americans should abide peaceably, without rancor, by the constitutional provisions and statutes which result from the working of the democratic process."

Further, I know of no one (and I am confident the same is true of Dr. Moehlman) who believes the nonsense about the true meaning of the establishment clause being "just and equal monetary gifts." The clause says nothing whatever about money; it neither approves nor disapproves of the expenditure of money for any purpose, except that covered by the fact that, if Congress could never make a law about "an establishment of religion," then the United States could never establish a religion, and so could never use public money to support such an establishment.

Dr. Moehlman writes in his foreword: "For several years now a new interpretation of the religious clause of the First Amendment has been proposed in American Roman Catholic circles to the effect that full separation of church and state and complete religious liberty are not therein guaranteed, and that the federal government was, moreover, given the right to distribute equally and justly monetary funds to all existing churches." The errors in this statement are large and numerous.

First, if by "full separation" he means the Rutledge Doctrine of complete, absolute, permanent separation of religious activity and civil authority, anyone ought to know that that was not "guaranteed," since it has never been observed by any administration of the United States or of any state. Second, what he refers to as the "new interpretation of the religious clause" is the interpretation of James Madison and of all the people responsible for its administration in American history down to 1947. Third, it has not been proposed in American Catholic circles any more than in any other circles. Fourth, it is the position of constitutional scholars throughout American history. Fifth, no informed person, Catholic or Protestant, believes that the First Amendment was designed to or did *give the federal government the right to do anything.* I doubt if Dr. Moehlman ever heard of a Catholic who believed this. Certainly, Dr. Moehlman cannot find a phrase in the book of mine to which he refers to justify his pretense that I ever expressed a belief in it.

He remarks that "the Roman Catholic tradition of the union of church and state is antithetical to the American emphasis upon government neutrality in religious matters." If Dr. Moehlman's scholarship had been adequate, he would refer to the "universal" tradition, or the "human" tradition, of the union of church and state, not the "Roman Catholic" tradition. It certainly has been the Protestant tradition since Protestantism came into being. The United States is the only important country in the world, in majority Protestant, which has never had an established church. We had nine established Protestant churches in the colonies in this country, and some of them persisted into the period of statehood, the last one disappearing in Massachusetts in 1833. Further, Dr. Moehlman should have known that the union of church and state is still practiced in many Protestant countries—England, Scotland, Norway, Sweden, Denmark, and also that it is not now a universal Catholic position, and is not practiced in a number of overwhelmingly Catholic countries, such as Belgium, Ireland, and the province of Quebec, and has never been advocated by an American Catholic leader, clerical

or lay. In other words, the idea that the union of church and state is a Catholic, as against a non-Catholic or Protestant, position cannot be held by any well-informed person.

The extent to which Mr. Moehlman is able to cut loose from all the controlling documents in this area, from the records of such men as Madison and Jefferson, and from the ordinary meaning of words in the English language, is demonstrated by his final position that "respecting an establishment of religion means 'having regard to religion' or 'in relation to religion.'" Dr. Moehlman makes no attempt to square this theory with the total history of the United States from 1791 to 1947. As shown earlier, Dr. Pfeffer has also been driven to this logical but ultimate absurdity of the Rutledge Doctrine, that "an establishment of religion" means the same thing in the Constitution of the United States as "religion."

Dr. Moehlman quotes me (on page 203 of his book) as having written that Jefferson "objected to the Government compelling contributions of money to support the religion of the Government from men who disbelieved and abhorred that religion." This is correct. But Dr. Moehlman's comment is completely incorrect. He says: "How then can the author [O'Neill] contend that the six-sevenths of the American population who are not Roman Catholics should be taxed to support his church?" The simple and totally truthful answer is that I never made any such contention at all and, of course, Dr. Moehlman does not accurately quote anything from me that implies that I ever believed anything of the sort.

In the accurate quotation which he took from my book, I was discussing Jefferson's Point 5 in the preamble to his Bill for Establishing Religious Freedom in Virginia, which reads *in toto*: "Well aware that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical." This is not a part of the law of Virginia. It is a part of the political argument in favor of the law. We can apply here to arguments about a proposed law Justice Frankfurter's remark in *Adamson vs. California* in which

he was discussing not a law, but a proposed amendment to the Constitution. Justice Frankfurter said: "Remarks of a particular proponent of the amendment, no matter how influential, are not to be deemed part of the amendment. What was submitted for ratification was his proposal, not his speech." What Jefferson submitted for adoption by the legislature of Virginia was not the preamble to his bill, but the section of it which stated what he proposed Virginia should enact.

If Dr. Moehlman can persuade the American people that Jefferson meant that to use tax money to support opinions which certain tax-payers disbelieve and abhor is the meaning of the Bill for Religious Freedom, and that the Bill for Religious Freedom gives us the meaning of the First Amendment, and that, therefore, under the Constitution of the United States and under the situation in the states probably at the present time, no tax money can be used to propagate opinions which any tax-payer disbelieves and abhors, Dr. Moehlman will succeed in ending all public education in the United States. There are doubtless some tax-payers who disbelieve in public education in its entirety, and certainly there are some tax-payers who "disbelieve" in almost every particular aspect of public education, from teaching bacteriology to teaching French and German and Russian languages. In Jefferson's preamble, as in his whole bill, he was trying to get Virginia to end the total influence of "an establishment of religion," and was not trying to do anything else.

Again on page 203, Dr. Moehlman quotes a fragment of one of my sentences as follows: "Equal, impartial assistance to all religions with favor to none." Dr. Moehlman's comment on this is as follows: "Rather illogical to pass from the view that Congress shall be neutral with reference to existing State establishments or religious preferences to the support of all denominations in every state 'equally and justly.' "

I was not arguing for support of all denominations in every state. In the passage from which Dr. Moehlman lifted this fragment of a sentence I was discussing Madison's message of February 21, 1811, in which he vetoed an act incorporating the

Protestant Episcopal Church of Alexandria in the District of Columbia. My comment on this veto was as follows: "This is so clearly an exclusive, formal, legal arrangement between the United States Government and one church (in fact, one parish) that it obviously has no bearing on equal, impartial assistance to all religions with favor to none (as in tax exemption). It contains the common denominator of all establishments—exclusiveness." Obviously, in this passage I was not "passing" from the view that Congress shall be neutral with reference to existing state establishments to the view that Congress should support all denominations in every state equally and justly. The First Amendment had no possible reference to a state establishment. It simply recorded, but did not create, the situation that Congress could not pass a law either for or against a national establishment of religion. I doubt if there is any mature person in the United States who believes that Congress should support all denominations in every state equally and justly. I certainly have never believed it, or written anything that could legitimately be interpreted to indicate such a belief on my part.

Professor Butts Adds to the Confusion

In 1950, Professor R. Freeman Butts published *The American Tradition in Religion and Education,* the purpose of which, he wrote, "is to present the historical evidence that should be taken into account when present decisions are made." It seems clear, however, from reading his volume that his specific purpose is to argue that the American tradition in religion and education is essentially the Rutledge Doctrine. Since it is impossible for anyone to stick to historical facts and establish this thesis, Professor Butts writes a rather confused argument.

This confusion results principally from three weaknesses in his argument. In the first place, he deals almost exclusively with the completely ambiguous phrase, "the separation of church and state." He seems at no point to recognize the ambiguity of this phrase or to realize that all Americans, regardless of their reli-

gious, political or educational philosophy, believe in the separation of church and state. No Americans believe in the union of church and state.

In the second place, Mr. Butts brings arguments concerning the wisdom or the desirability of a particular measure into a discussion of its constitutionality. The two questions are, of course, in American tradition, essentially different. One is a legislative question and the other is a question for the courts.

In the third place, he fails to distinguish, and to keep clear the difference between, state constitutions and the federal Constitution. In this connection he lists at some length court decisions on state statutes which deny certain specific items of co-operation between the state and certain religious activities. This, of course, in no way controverts the undeniable fact that every state has throughout its history in some ways co-operated with religious activity. So far as I know, no one has ever contended that all states have co-operated in every possible way with religious activities. Of course they haven't. Neither have they co-operated in every possible way with activities concerning health or agriculture or other interests of the American people.

Professor Butts has a habit of quoting from historical documents and then concluding that the passages quoted mean something very different from what they say. For instance, he quotes the Illinois State Constitution of 1818 providing "No man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his conscience." And also that "no preference shall ever be given by law to any religious establishments or modes of worship." Following these quotations, Mr. Butts remarks that the words "clearly show the intent to prevent the use of public funds for any religious group, an intent directly in line with the meaning of the establishment of religion clause of the First Amendment." Clearly, the quoted section says nothing about using public funds to support religious groups so long as there is no preference for one group over others. "Released time" did not *compel* anyone to attend or support a place of worship or maintain a ministry, or do anything else.

Illinois used public funds in various ways to aid religious activities for well over a century after this constitution was adopted, in agreement with the policy of the federal government and every other state in the union. The legislative and judicial history of Illinois shows clearly that this passage was not interpreted in Illinois to mean what Mr. Butts says was its clear intent.

Professor Butts remarks in another place that "as early as 1896 it was widely accepted that the Fourteenth Amendment (1868) applied to the states the same protection of individual rights and liberty that had been applied to the Federal Government in the original Bill of Rights." Professor Butts offers no evidence of the wide acceptance of this idea, and, as a matter of plain record, the Supreme Court has never accepted the interpretation of the Fourteenth Amendment as given here. In *Adamson vs. California* (June, 1947), midway between the Everson and McCollum decisions, the Supreme Court took the position that the Fourteenth Amendment is not "a shorthand summary of the Bill of Rights," but only that the due process of law clause of the Fourteenth Amendment protects from state interference those "basic freedoms which are implicit in the concept of ordered liberty." The Court *denied* clearly, after a long argument from Justice Black to the contrary, that the Fourteenth Amendment was designed to, or did, place as restrictions on the states all of the restrictions which the First Amendment expresses as being upon the federal government.

Again, in *Wolf vs. Colorado* (June, 1949), the Supreme Court took the identical position which it had taken in *Adamson vs. California,* and declared again that the Fourteenth Amendment is not "shorthand for the first eight Amendments to the Constitution," but rather that it exacts from the states all that is "implicit in the concept of ordered liberty." Thus the Justices of the Supreme Court, and Professor Butts, seem to be unaware that the position the Court took in *Adamson vs. California* and *Wolf vs. Colorado* is vitally inconsistent with the position the Court took in the McCollum case, midway between these two decisions.

Obviously, voluntary religious education in the state public school system in Champaign, Illinois, was approved by the parents of over 100 children, and was disapproved by the parents of one child who was not in the program. Further, it was approved by the local school boards and by state educational authorities; it was consistent with the laws of the state legislature, and was so held by the state supreme court. Similar programs of voluntary religious education were in use at that time in more than thirty other states, and identical programs in at least ten. How such a voluntary program, supported as this was by all the agencies of the state, legislative, educational, and judicial, could violate anything that is "implicit in the concept of ordered liberty," neither Professor Butts nor the Supreme Court Justices have ever undertaken to explain.

Professor Butts, in his historical survey, omits to mention three series of historical facts, all matters of open historical record, any one of which makes his position untenable. First, the United States government began using federal funds in support of religion on a non-discriminatory basis in the first Congress, which wrote the First Amendment, and has been doing so ever since, and is still doing so nearly six years after the McCollum decision. Second, every state, from the beginning to the present, has used state funds in various ways in aid of, or in co-operation with, religion and religious education. Third, Protestantism was an integral part of the program of most public schools throughout America until about 1900 (and still is in some places). It was outlawed in public schools by individual state action which had no reference either to the First or Fourteenth Amendment, or to the state constitutional provisions barring a state "establishment of religion." These facts alone clearly demonstrate that the American *tradition* of the relations of government and religion is the exact opposite of the theory advanced by Professor Butts.

His most original contribution to the attempt to make the First Amendment mean something that it clearly never meant to Madison or Jefferson or the members of the first Congress is the invention of the phrase "multiple establishment." To talk of a

"multiple establishment" of religion, as Professor Butts does in many places throughout his book, is contrary to the centuries-old usage of the term "establishment" by scholars, lay and religious, Catholic and Protestant. If this constant historical use of the term, and the term as defined and explained in such places as encyclopedias and dictionaries, has any legitimate meaning, it is about as absurd to use the phrase "multiple establishment" as it would be to use the phrase "multiple monopoly" to indicate a monopoly of the soap industry that could be given equally to all soap manufacturers who desired it.

Professor Butts treats as multiple establishments instances of simultaneous public support of a number of different Protestant churches, the establishment of Protestantism in the constitution of South Carolina, and the attempt to establish Christianity in Virginia, which was defeated by Madison's *Memorial and Remonstrance*. Establishing Protestantism and Christianity are, clearly, perfect examples of government favor given exclusively to one religious group. Each would be an establishment of religion in the ancient, scholarly use of the term, which was common to Madison, Jefferson, and their colleagues in the fight against establishment and for equality among the different religious groups in America.

Tax support to a number of Protestant churches, if not available to any other religious groups that wanted it, would also be an example of establishment, in the regular American, historical meaning. If it was available to all religious groups, then it was not establishment, any more than tax exemption or chaplains in the armed forces constitute an establishment of religion.

Professor Butts reports Jefferson's position as that the powers of government are completely shorn of any authority to co-operate with religious groups. He makes no attempt whatever to square this strange interpretation of Jefferson's position with the fact that Jefferson in his writings advocated such co-operation again and again, and throughout his public life actively promoted such legislation, particularly as President of the United States.

In one passage, Professor Butts does mention some of the instances of co-operation between government and religion in various ways in the federal government and in the states, but he characterizes these as "hold-overs from pre-separation days." Then Professor Butts tries to dispose of over 160 years of co-operation between civil authority and religious activities in the federal government and in all the states by the statement that "the weight of evidence indicates that these practices are exceptions to the principle of separation of church and state, rather than practices which prove the principle of cooperation between church and state. The principle is clearly separation, and not cooperation." Professor Butts does not indicate what evidence he is talking about. He continues: "Such practices have been justified because of their contributions to public welfare but . . . if the people are forced to choose between expanded or multiple religious establishments at public expense and the preservation of the public peace and welfare, they are likely to choose the latter, as they have done so often in the past." He seems unaware of the fact that some twenty times the responsible agency of the American people in the Congress of the United States has declined to allow a formulation of what is the essence of the Rutledge Doctrine to go before the people as a possible amendment to the Constitution for ratification by the states. The thought that the American people are facing a clash, and a choice, between "the preservation of public peace and welfare" and the continuance of the kind of co-operation between federal and state governments and religious activities which are coincident with the total existence of each of these governments strikes me as an utterly fantastic idea.

Professor Butts quotes with evident approval Justice Frankfurter's strange statement that "separation means separation, not something less," and also Justice Black's statement in speaking for the Court in the McCollum case: "The state also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through the use of the state's compulsory public school machinery. This is not separation of

church and state." Neither Professor Butts nor the Justice of the Supreme Court seems to be aware of the fact that all the compulsory school-attendance laws in the United States help to provide pupils for religious classes in the schools of the various denominations which maintain schools. These are at least Catholic, Episcopalian, Jewish, Lutheran, and Baptist. Also, neither Professor Butts nor the Justice of the Court seems to realize that Illinois never had any compulsory public school machinery. No state has compulsory public school machinery and none, so far as the record shows, has ever tried to except Oregon. In 1925, the United States Supreme Court, by a unanimous decision, decided that the attempt in Oregon to force children to attend public schools was beyond the province of the government. All compulsory attendance laws have the identical application to public and private, secular and religious schools. This fact ought to be evident to Professor Butts and to the Justices.

It should be noted, greatly to Professor Butts' credit, that in his attempt to support the strange new doctrine in regard to the religious clause of the First Amendment, he has not seriously attempted to gain any advantage from the possible or probable religious bias against his Catholic fellow citizens which might be found among uninformed readers. In this way he is a refreshing exception to the other books that have come so desperately to the defense of the Rutledge Doctrine.

Dr. Dawson Hears Rumors

By contrast, Dr. Joseph Martin Dawson's books are extreme examples of anti-Catholic bias and the spreading of a great deal of misinformation, false statements, and insinuations concerning American Catholics. In 1948, he published *Separate Church and State Now*. This volume is a thoroughly uninformed and slanderous attack upon American Catholics. Dr. Dawson writes: "We do not charge that all Roman Catholics in the United States are fanatics, but it is common knowledge that they find separation of church and state contrary to their fundamental philosophy and

dogma, and therefore peculiarly irksome. In their earnest opposition, they pose the most serious threat to this American institution. It is important for the people to know why this is so."

Notice Dr. Dawson's reliance upon what he calls common knowledge, rather than evidence, in this totally false statement concerning Catholic philosophy and dogma, and the opposition of American Catholics to the constitutional arrangement we have in this country (which Catholics helped to write) concerning the relations of government and religion. Notice the extension of Dr. Dawson's reliance upon such things as "common knowledge," that is, rumor, to bolster up the specific and false attack upon his Catholic neighbors: "The two great political parties spar for delivery of the Catholic bloc of votes in this country. In the second election of Franklin D. Roosevelt, the bloc was estimated at 11 million. No matter what may be the exact size, it is judged sufficient to hold the balance of power in any presidential election. It is alleged by many that in the struggle to capture this bloc the leaders of the party in power make trades with the hierarchy. In turn, the leaders of the party trying to get in make pledges to be fulfilled if elected to office. In this manner the Catholics obtain points of vantage for their policies at home and abroad, as well as a preponderance of patronage in the assignment of government jobs. One heard the rumor that the Democratic leadership in the Roosevelt campaign promised the Catholics that if they delivered the requisite number of votes, the President would appoint an ambassador to the Vatican."

Since the charge of the delivery of Catholic votes by the hierarchy is totally false, and since the evidence that it is totally false is available on all sides, if Dr. Dawson wanted to use it, he is forced to rely upon such expressions as "the bloc was estimated," "it is judged," "it is alleged," and "one heard the rumor." This seems to me both intellectually and morally a shocking way for any responsible man to attempt to substantiate specifically derogatory charges.

Concerning Mr. Roosevelt's sending Mr. Taylor to the Vatican, Dr. Dawson observes: "It was known that the Vatican had

the most effective espionage system in the world. Objectors protested because the Pope insisted that for any secrets imparted to our government, secrets of like value would be expected from us. Mr. Hull emphasized the possible usefulness of the Pope as a factor in making the peace. Well might he dwell on the importance—but in reverse of his meaning—for we know perfectly well now that one of the most serious causes of tension between America and Russia has been the Vatican. Our apparent alliance with the Vatican, a totalitarian church which has universal ambitions, has lent plausible confirmation to Russia's oft repeated charges that the United States is likewise imperially minded and seeking world domination." Dr. Dawson omits to mention how "it was known," or who knew, that the Vatican had "the most effective espionage system in the world." He fails to identify the "objectors," or to indicate how they discovered that "the Pope insisted" on the equal exchange of secrets, or how it came about that he or anyone else knew "perfectly well that one of the most serious causes of tension between America and Russia has been the Vatican." I should suppose, also, that a man of Dr. Dawson's position would know the meaning of the word "totalitarian" and, if so, he would know that the Church is not a totalitarian church, or a totalitarian institution of any kind.

In his chapter entitled "Can National Unity Survive?" Dr. Dawson writes: "The first powerful culture with which our country must deal may be labeled plainly 'pagan.' . . . The second powerful culture bidding for American adoption is that of Roman Catholicism. . . . It is a totalitarian system, opposed to our democratic order. Quite definitely we shall have to except Catholicism from the religious groups which contribute to democratic freedom, and so list it with secularism as a threat to national unity. It is regrettable that some others than Catholics will call this bigotry. Notwithstanding the charge of bigotry, we enter upon this discussion with emphatic refusal to be classed among anti-Catholic campaigners; we repeat we wish the Catholics to have every right we enjoy. We only insist that they shall have nothing but equal rights—no special privilege!"

I doubt if "bigotry" is a helpful word in controversy. I am convinced that most of the people who are taken in by publications of this kind are not bigots. They are essentially uninformed in regard to the teaching of the Catholic Church or the beliefs, practices, and ambitions of American Catholics. And they are grossly misinformed by such writers as Dr. Dawson. I should not call these outbursts of Dr. Dawson examples of bigotry. To me they seem rather to be the result of a deeply cherished ignorance.

I am confident that if Dr. Dawson could get himself into the emotional state in which he would like to know about the doctrines of the Catholic Church and the attitudes of American Catholics, he could easily learn these, and in such a search he would easily discover that never in American history has any responsible Catholic spokesman asked for special privilege.

I have found nothing more utterly fantastic in all these anti-Catholic books which I have been reading recently than Dr. Dawson's discussion of Catholicism and Communism. He writes: "Protestant grievance against Communism is chiefly Communism's denial of religious liberties; the Roman Catholic grievance is mainly against Communism's denial of clerical control." And again: "Protestants feared the Pope would provoke war with Russia on the issue of Russia's denial of church and state partnership, and thus involve in the dire struggle millions of anti-Communists, who have long since repudiated clericalism in Government. Until the United States disavows its partnership with the Roman Catholic Church, religious liberty in Russia will probably be steadily worsened."

In 1953, Dr. Dawson further misrepresented the United States Constitution and the attitude of American Catholics in a second book, *America's Way in Church, State and Society.* In it he writes:

"There are those who, like termites, work in subtle ways to undermine it [the Constitution]; who try to subvert it by seeking to make it mean something less than complete church-state separation. They diligently seek to set aside the traditional, historical

acceptance of the Constitution as judicially interpreted, and to substitute instead an outmoded European concept."

"One of their foremost advocates of an interpretation of the Constitution that would set aside the traditional judicial one is educator J. M. O'Neill, Professor of Speech in Brooklyn College. The student of freedom wonders how the Roman Catholics who owe so much to the historic American principle for their freedom in this country, could put forth so hostile an affirmation. . . ."

The "subtle" way in which I worked "like a termite," in attempting to do whatever I was doing was to publish a book (*Religion and Education Under the Constitution*) of over 300 pages through Harper & Bros., in which I defended the traditional, historical meaning of the religious clause of the First Amendment, and offered for it, not statements that something had been suggested, or thought, or proposed, or rumored, but unanswerable historical evidence (at least, evidence that never has been satisfactorily refuted) of the attitudes and purposes of Jefferson and Madison and the men who wrote, adopted, and ratified the First Amendment, and the constant interpretation of it through American history down to our present day.

Dr. Dawson evidently does not like my book, but he apparently can find no dependable evidence on which to refute the position I there took. He writes such statements as this: "O'Neill has presented his exploded mischievous theory. . . . Why this belated attempt? Obviously to justify the Roman Catholic Church's pressure for tax support of its institutions. Notwithstanding O'Neill's denials, his position would also make for the view of the well-known pronouncements of the Roman Catholic Church."

He reports that I urged "a revamped interpretation of the Constitution which would permit equitable aid to all churches including the Roman Catholic." This statement is accurate only in so far as equitable aid to all churches, if we ever had any such thing, would include the Roman Catholic. But Dr. Dawson's next sentence is particularly interesting for its lack of

evidence: " 'Equitable' is a propaganda term, for everyone recognizes that government aid would never be given equally, but only in response to church pressure, with the result that the most aggressive church groups would be the ones to get it."

In 1947, in the Everson bus case which came up from New Jersey, the United States Supreme Court decided that the paying of bus fares to pupils in religious schools was not an establishment of religion and therefore not a violation of the Constitution of the United States. Incidentally, the children involved in this particular case were Catholics going to a Catholic parochial school. As a matter of pure record, this decision pleased a great many Catholics very much indeed, and a great many non-Catholics. Many people praised the decision without regard to the many errors of fact, biography, and Supreme Court history, which occurred in the various opinions written in this case. Since most commentators on this decision, or any other, would be interested simply in the decision and would not investigate in detail the material in the various opinions the Judges submitted, it follows, I believe (though I have not made a survey), that most Catholic comment on this decision was highly in favor of it. Dr. Dawson's comment is as follows: "The ruling of the Court sorely displeased the Roman Catholics. Immediately they [*sic*] set about devising the O'Neill theory to offset it, for it effectively cut off hope of government aid for their institutions."

The idea that anybody, other than the Founding Fathers, set about devising the theory which I supported is, of course, complete nonsense. From 1936 to 1948 I was a member of the Committee on Academic Freedom of the American Civil Liberties Union, and was chairman of that committee from 1944 to 1948. Arising basically out of my experience on that committee, and more specifically out of a speech I made at the invitation of the Ethical Culture Schools at the 75th anniversary of the institution of these schools, I wrote an article which was called "Church, Schools, and the Constitution." This article was published in *Commentary* in June, 1947. The article had been written and accepted by the editor of *Commentary* before the Ever-

son bus case was decided. When that decision came out, Mr. Elliott Cohen, Editor of *Commentary,* told me that he wanted me to include a comment on that decision in order to make the article explicitly timely. That I did. Of course, no one since the late eighteenth century had anything to do with "devising" the theory which underlies that article—as it underlies practically all of American history, including the Supreme Court history up to that time. My object was to help to clarify the tremendous amount of misunderstanding which, in years on the committee of the American Civil Liberties Union, I had found to be prevalent even among well-informed people in America.

The reaction to this article in *Commentary* was such that I decided at once to expand it into a book, in which I would have an opportunity to offer a great deal of carefully documented evidence which, of course, was not possible in a magazine article. This book was about two-thirds done when the Court rendered its decision in the McCollum case, and that decision, with its almost total misrepresentation of the positions of Madison and Jefferson, and its denial of American history from 1791 down to date, was so extreme that it naturally decided me to pay a great deal of attention to that decision in the book. It delayed the completion of the book, which was finally published in 1949.

In his closing pages, Dr. Dawson has this passage: "We cite again the fact that it is conceivable that the Protestant culture out of which grew our American institutions might one day yield to a Roman Catholic culture of different outlook. If the disinterred Catholic idea of the First Amendment should become the commonly accepted view, then certainly America's most distinctive principle, the unique principle on which Justice Frankfurter asserts America has staked her very existence, would perish, and with it would die religious freedom, mother of all our freedoms."

I suppose this passage may very well stir up greater prejudice against Catholics among those who are so uninformed as to be deceived by Dr. Dawson's volumes. I submit that the real threat to American unity, to the continuation of equal privileges for all and the protection of religious freedom, is the fact that men like

Dawson and Blanshard and Nichols continue to present totally false and vicious doctrines, comparable to that contained in this passage. Every historically informed person knows that what Dr. Dawson calls the Catholic idea of the First Amendment has been the "commonly accepted view" in America from the beginning down to the Rutledge Doctrine of 1947. If that view is capable of destroying the unique principle which he is talking about, then the principle should long ago have been destroyed. Under what Dr. Dawson calls the Catholic idea of the First Amendment (which, of course, is not an exclusively Catholic idea—it is simply the idea of scholars in general) American religious freedom has developed and expanded. The public schools have ceased to be essentially Protestant parochial schools at public expense, which they were for generations, and enlightened Catholics and Protestants are working together to make the public school system better than it now is.

Dr. Dawson's refusal to accept the position of Catholics that they believe in the public school system and support it the same as everybody else is obviously completely contrary to fact. Until very recently, the majority of Catholic children in America were getting their only schooling in public schools, and at the present time the number has shifted very slightly, so that in the last year or two it seems probable that a slight majority of Catholic children are in parochial schools or religious schools of one kind or another. The idea that American Catholics are, or should be, or can be, hostile to, or uninterested in, having the public school system as good as possible is contrary to all available evidence.

P.O.A.U. and the Bryson Bill

In May, 1947, Congressman Bryson of South Carolina made one more attempt to get the essence of the Rutledge Doctrine put into the Constitution, by introducing in the House of Representatives a bill to amend the Constitution to provide "that neither Congress nor any of the several states shall aid any educational

institution wholly or in part under sectarian control." This bill died in committee with the passing of the Eightieth Congress in 1948.

When the *Manifesto* of the new organization, "Protestants and other Americans United for the Separation of Church and State," came out in January, 1948, I sent a letter to each of the six signers of the *Manifesto* asking each if he would (1) support the Bryson Bill and (2) advocate its support by the new organization. The P.O.A.U. had given as its purpose "to assert its full strength to the end that there shall be no more breaches in this wall [separating church and state], that the breaches already made shall be repaired, and that *the complete separation of church and state* in an undivided state-supported educational system shall be maintained." (Italics supplied.) If these men had faith that the American people believed in any such doctrine, and, therefore, dared to submit this change in the Constitution through the democratic process to the people of America, by way of the Congress and the legislatures of the several states, one would suppose that they would come to the support of the Bryson Bill.

But not so. Of the six signers, Bishop Oxnam answered "No" to both questions. He reported that a conference of religious leaders thought "that it would be much wiser to follow through the matter of cases that look to Supreme Court decision upon this issue than to attempt a Constitutional Amendment." The fact that the Supreme Court has no authority to *amend* the Constitution (though it has to interpret it) apparently slipped the bishop's mind—as it did that of the Supreme Court itself in the McCollum decision. To most students of political science the two procedures of "amending" and "interpreting" are quite different. Genuine interpreting is always limited to the possibilities of the language of the document being interpreted. When Chief Justice Charles Evans Hughes said that the Constitution means what the Supreme Court says it means, he added in the next sentence that the Court had to find the meaning in the language being inter-

preted. This second sentence seems not to be quoted by those who believe in the dictatorship of the Supreme Court, whenever they can hope that it will deliver its edicts in their favor.

Dr. Charles Clayton Morrison answered "No" to both questions. He feared that such support would be taken as "a confession that the Constitution does not already take care of these matters." And he was right. Such action would certainly be taken as a recognition of the fact that the Constitution of the United States has nothing to say on these matters.

Dr. Louis D. Newton, President of the Southern Baptist Convention, answered "No" to both questions. He was "frankly doubtful whether it could be put through at this time and to press for its enactment without success would hurt the cause of religious freedom." Dr. Newton could easily get a debate with Protestants and Catholics, united in defense of religious freedom, arguing to the effect that the *adoption* of such an amendment would hurt religious freedom, and deprive the states of the exact freedom which the First Amendment was designed to protect. But there would probably be no possible debate on the proposition that its defeat would seriously interfere with the P.O.A.U. pretense that it is fighting for something that most Americans, except Catholics, believe in.

Dr. Dawson, Executive Secretary, Joint Conference, Committee on Public Relations, Baptists of the United States, answered "No" to both questions. And he wrote: "I had lunch with Mr. Bryson today and we discussed the situation. The new organization, Protestants and Other Americans United for Separation of Church and State, through its legal committee's advice, decided for strategic reasons not to push the amendment plan for the present. Mr. Bryson has surrended none of his convictions as to the claims of his bill, but is disposed to abide by the judgment of the new organization."

Dr. Edwin McNeil Poteat answered "Yes" to both questions, and the sixth of the signers of the *Manifesto,* Dr. John A. McKay, did not answer.

An extended comment on Dr. Dawson's report is hardly re-

quired. This eminent clergyman, at a private luncheon, persuaded Congressman Bryson (who "surrendered none of his convictions" regarding the matter) to abide by the judgment of Protestants and Other Americans United to refrain, "for strategic reasons," from pushing his bill. Perhaps the strategic reasoning arose from the certainty that the bill could be neither passed by Congress nor ratified by the states, with the consequent disastrous results to the total activity of P.O.A.U.

I suppose anyone who has read Dr. Dawson's books, or the pronouncements of P.O.A.U., will have no difficulty in imagining the tone and temper of a P.O.A.U. bulletin that would be issued, expressing the sense of outrage of the leaders of that organization, at the gross impropriety and the threat to the republic, if they had discovered the following paragraph in the daily press: "Yesterday Cardinal Spellman had lunch with Congressman Bryson (or Brown, or Branigan) and reported to the Congressman that the Legal Committee of the Knights of Columbus had decided that, for strategic reasons, it would be unwise to push the Congressman's bill to outlaw public money to religious schools. While the Congressman is reported not to have surrendered any of his convictions on the matter, he decided to abide by the judgment of the Knights of Columbus." What a breach that would have been in the wall of separation between church and state! What contempt for democratic and constitutional procedures! What a craven surrender of Congress to the dictation of the Pope! I have no doubt it would have been one of the most sizzling bulletins ever issued by Protestants and Other Americans United for the Separation of Church and State.

5.

Catholics and Religious Education in America

THE GENERAL SUBJECT of religious education in America is one of the topics upon which Catholics find themselves involved today in certain amount of controversy.

The basic reactions of American Catholics who study the educational controversies that have been thrust upon them in this generation probably are three. First, the hostile attitude that seems on the surface to be against Catholic religious education is in many ways really against all religious education, if not, in fact, against religion itself. Second, that hostility seems to grow out of ignorance that must be deeply satisfying, since the truth is so easily available. Third, there is in the hostile criticism a widely pervasive false assumption that Catholic education is a new and un-American importation from foreign parts.

Catholics First in American Education

Education is only one of a number of important ways in which Catholics were first in writing the history of America. Clearly, America was discovered by a Catholic, whether we credit the discovery to Columbus or to Lief Erickson. The first explorers, John and Sebastian Cabot, 1497, also were Catholics.

The Christian religion was first introduced to what is now the United States of America when Catholicism came to Florida about 1560. And education in what is now the United States began in the Catholic schools which started in Florida about 1594, and in the territory that is now New Mexico about 1600. These schools antidated by a number of years the first schools in the northern Protestant settlements. The Dutch Reformed School was started in New Amsterdam in 1633, and the Boston Latin School in 1635.

It is interesting also to recall that the Catholic schools on this continent first introduced non-segregation of races, in that the Indian children and the white children were taught together in these early Catholic schools; and the first application of an anti-slavery movement came to America when the Pope decreed excommunication for any of the Spanish Catholics who enslaved the native Indians.

Religion in Early American Education

Early American education, in so far as it was administered in organized schools, was almost wholly conducted under religious auspices, and any under other auspices employed curricula in which there was considerable religious content. The early schools and colleges were established and conducted almost solely with the primary object of teaching religion. In fact, the education of the men who established this country and wrote its fundamental documents was almost exclusively received in what would be called today religious schools. It is generally held that the beginning of our public school system was the establishment of common schools in Massachusetts Bay Colony about 1630 to 1650. These schools were strictly religious schools, conducted under the authority of the clergy of that day in that colony.

Public Schools Protestant for Generations

About two centuries after the establishment of the common schools in Massachusetts Bay Colony, the American public school system, as we know it today, was set up in the United States of America. These schools were for many decades essentially Protestant schools operated at public expense. Professor Howard K. Beale, Professor of History at the University of North Carolina, published, as a report of the Commission of Social Studies of the American Historical Association, *The History of Freedom of Teaching in American Schools.* In this volume he sets forth in great detail the situation in the public schools of

about a century ago. Discussing the period of about three decades after the beginning of the public schools, Professor Beale writes:

"While sectarianism was increasingly discouraged, practically all schools still included religion in their curricula. School opened with prayer. The Bible was read and portions of it memorized. Hymns were sung. The principles of Protestant Christianity, insofar as they were accepted by all Trinitarian sects, were instilled into the children.

"The Catholics had always had a few schools of their own. As democratic influence increased their desire for education, they built more. When thousands of new Catholics arrived from Europe, they built still more. In days when all education was in private hands, this arrangement had been satisfactory. Their teachers and their children had been on equal terms with Protestants. Under a system of public education, however, they contributed in taxes to the support of schools in which their teachers were not allowed to teach, and could not have taught the required subject anyway without violating their own consciences. Furthermore, the Catholics were not satisfied to have religion excluded in the school. Like the Protestants, they wanted to teach religion to children, but, again, like the Protestants, they wanted to teach their own religion.

"If, however, they [the Catholics] were to be taxed for the support of public schools, then, since schools that taught the Protestant religion could not satisfy them, they demanded to share the school fund to pay their own teachers to teach their own children and in schools that taught Catholic doctrine. There were American precedents for state aid to religious schools. The Protestants objected to having public tax money used to spread 'dangerous' Papist power, and nationalist democracy objected to contributing to schools that were controlled neither by the local community nor by the nation, but by a 'foreign sovereign.' "

Early Public Support for Religious Schools

Among the precedents for public support of parochial schools, Professor Beale mentions that in the 1830's, Lowell, Massachusetts, granted public money to parochial schools. In 1849, Pennsylvania passed the law providing for public money for parochial schools.

The clash over the expenditure of public money exclusively for what was essentially a system of Protestant schools was long and bitter. Professor Beale reports that 100 Catholic children were expelled from the Elliott School in Boston for refusal to participate in school, in Protestant religious exercises. In 1858, a Catholic child was severely flogged in Boston for refusing to read the Protestant Bible. In Ellsworth, Maine, Bridget Donahoe was expelled from school for refusing to read the Protestant Bible. In 1854, the Maine Supreme Court, in denying redress in this case, declared: "The right as claimed undermines the power of the state."

The Philadelphia Riots of 1844

The detailed story of the clashes of this period, from about 1800 to 1860, is told in detail with ample evidence and explicit documentation by Professor Ray Allen Billington, Professor of History at Northwestern University. The peak of the disorder was undoubtedly that of the Philadelphia riots of 1844. Professor Billington gives the full story of this instance of religious war in *The Protestant Crusade*: "For more than a decade before the middle 1840's, forces had been at work to create antipathy toward Rome; societies, lecturers, newspapers, magazines, churches, ministers, and a political party had all been enlisted in the cause. An intolerance unusual in a democratic land had been bred in thousands of people. This prejudice against Popery led inevitably to violence and bloodshed, for such depth of feeling as that created by the anti-Catholic agitators demanded physical expression in this forceful generation. This outburst occurred in

Philadelphia during the summer of 1844, when natives and foreigners clashed in a series of riots, which turned the City of Brotherly Love into a chaos of hatred and persecution . . . The spark which set off the smoldering hatred was an educational controversy similar to that of New York."

The nature of the spark was this: The Catholic Bishop Kenrick of Philadelphia "on November 14, 1842, addressed a letter to the Board of Controllers of the public schools complaining that the Protestant Bible was being read to Catholic children and that religious exercises were being made a daily part of the instruction. He respectfully asked that the Catholic children be allowed to use their own version of the Bible and that they be excused from other religious instruction. In January, 1843, the School Board complied with this request, allowing children to read from any version of the Bible which their parents selected."

This action of the school board aroused the anti-Catholic forces to fury. "Pamphleteers and local religious press were unrestrained in their condemnation of the controllers' action and demanded that Protestants throw every obstacle in the path of the Catholics who sought to introduce un-Christian education." The inevitable result was a period of disorder, riot, and bloodshed. "A proclamation by Bishop Kenrick deploring Catholic participation in the disorder did little good, for when copies were hurriedly posted throughout the city, they were torn down and made into cockade hats for the natives. . . . The editor of the *Native American* completely lost his sense of balance; his paper appearing with its columns shrouded in black, boldly demanded reprisal and more bloodshed. The editor closed his appeal with the following: 'We now call on our fellow citizens, who regard free institutions, whether they be native or adopted, to arm. Our liberties are now to be fought for; let us not be slack in our preparations.' . . . Spurred on by this ill-advised warning, native Americans assembled that afternoon in the Statehouse yard. . . . Traversing the Irish section shouting insults and damaging Irish homes, the mob soon locked in armed conflict with equal riotous foreigners. The Hibernia Hose Company house was stormed and

demolished; before midnight more than thirty houses belonging to Irishmen had been burned to the ground and only the tardy arrival of the militia put an end to the holocaust."

Before the rioting had ended, two Catholic churches and the Catholic seminary were burned. These events marked the climax of the Philadelphia riot. "When the city took stock of its brief interlude of mob rule, it found that thirteen citizens had been killed and more than fifty wounded in the three days of fighting."

Protestantism In, Catholicism Out

This long and riotous period of educational contest was finally ended when the various states passed constitutional provisions and laws which, so far as the legal enactments were concerned, removed Protestantism from the public schools and forbade the use of public funds to any school in which religious doctrines or tenets were taught. These actions by the various states were largely completed by the time of the Civil War. New York State, for instance, by a statute passed in 1842, took New York City's public schools out of the hands of the Public School Society in which they had been placed, and made regular public schools of them, and forbade public support of any religious or sectarian school.

The Public School Society was founded in New York City in 1805, and in 1825 the State of New York turned over to the New York City Council the share of the city's state school funds, and the council gave the money of the schools to the Public School Society, which was permitted to levy a local school tax, and which excluded any "religious" school from sharing in the school funds. But the Public School Society was a completely Protestant organization that taught Protestant Christianity. In fact, it had been chartered to teach in its schools "the sublime truth of religion and morality contained in the Holy Scriptures."

However, in a number of the states these constitutional provisions or state laws were phrased to prohibit the teaching in the

public schools of any particular Christian or religious doctrine. Thus, the teaching of Protestantism, rather than Presbyterianism, Methodism, or the doctrine of any particular Protestant church, was not explicitly prohibited. This language, however, ruled out public money to Catholic schools. So the public schools continued, legally in some states and illegally in others, for decades after these state arrangements, to be essentially Protestant schools.

Says Professor Beale: "The net result of all this agitation was that the status of the teacher remained about what it had been. The Catholic teacher was still barred from the public schools, as was a Jew, and in many places a deist or a Unitarian. Trinitarian Protestant Christians, however, retained the liberty to teach the Bible and the general principles of Protestant Christianity in the schools with no further restraint upon them than the prohibitions against sectarianism."

The "Establishment" of Secularism

In the last half century, particularly, Protestantism has in large part withdrawn formally from its favored position in the public schools of the United States. Instead, secularism now occupies a position of preference

Secularism is defined by the Committee on Religion and Education of the American Council on Education, in its pamphlet, *The Relation of Religion to Public Education,* as (1) "not a denial of religion, but the denial of its relevance to the major activities of life," or (2) "a definite philosophy of life which has no place for religious creeds or for the institutions of worship . . . a philosophy which rejects religion in all its historical forms."

Today, in most public education in America, secularism has most of the special advantages of "an establishment of religion." State laws and state court decisions based on state laws, aided by the lone McCollum decision of the Supreme Court, have presented this situation to the forces of secularism. However, public education has in its ranks so many believing Protestants,

Catholics, and Jews that the tremendous advantages that have been offered to "devout secularists" in education have rarely been utilized.

In its pamphlet, the Committee of the American Council on Education also writes: "In many institutions of higher education and of teacher education a system of philosophy is taught—in the traditional indoctrination sense of that word—which negates the religious beliefs of millions of Americans. To present such a system of philosophy with the emphatic endorsement of the instructor, while at the same time contending that religion must be kept out of education, is strangely inconsistent. While a naturalistic philosophy involves religious assumptions quite as much as a supernatural philosophy, to call supernaturalism a religion and naturalism a philosophy, and on that basis to exclude the one and embrace the other is, we think, a form of self-deception." It seems obviously also to be giving a preferred status to one religious point of view and to be, therefore, essentially a violation of the freedom of religion in education in this country and of both the clauses in the statement of the First Amendment concerning religion.

Secularism vs. Religion

The modern contest concerning religion in education is no longer a contest against Catholicism in education. The contest today is between militant secularism and religion (as religion is usually defined) in regard to the influence that either is to have in the education of American children. By religion I mean a system of beliefs and practices having reference to man's relation to God. Madison, in his *Memorial and Remonstrance,* called religion "the duty which we owe to our Creator and the manner of discharging it." Jefferson, in his discussion, *Freedom of Religion at the University of Virginia,* in which it is to be noted that he was not only discussing religion in general, but religion in public education, wrote: "It was not, however, to be understood that instruction in religious opinion and duties was meant to be

precluded by the public authorities as indifferent to the interests of society. On the contrary, *the relations which exist between man and his Maker, and the duties resulting from these relations,* are the most interesting and most important to every human being and the most incumbent on his study and investigation." [Italics supplied.]

In 1879, the United States Supreme Court, speaking in the words of Mr. Justice Field, said: "The term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His being and character, and of obedience to His will." This is obviously the meaning in which the term "religion" is used in recent law cases, such as the Jehovah's Witnesses cases before the Supreme Court, and, in fact, in any case in which the question of "an establishment of religion" or of "religious freedom" has been argued before that Court.

It seems obviously absurd to try to read into the First Amendment the meaning of religion as the word is used in the following passage by Dr. Conrad Moehlman in his *School and Church*: "The religion of the American majority is democracy." And again, "In fact, the religion of public education is a more powerful factor in American life today than that of the churches. The only religion with which the great majority of American youth have ever come in contact is the religion of public education, where intolerance, bigotry and race prejudice are not at home."

If "religion" in America properly or principally means "democracy," as Dr. Moehlman says, then the First Amendment must mean that Congress can "make no law respecting" democracy. Dr. Moehlman has invested a great deal of time, energy, and paper in recent years fighting the clear, literate language of the First Amendment, and has finally, and quite logically from his premises, arrived at the crowning absurdity that the Congress of the United States is prohibited by the Constitution from making any law about democracy!

Separation vs. Religious Freedom

Professor Wilbur G. Kats, of the University of Chicago Law School, in the Spring, 1953, issue of the *University of Chicago Law Review,* takes the position that the complete separation of church and state is, in many situations, a violation of religious liberty. He writes: "One must expect that where strict separation is incompatible with the free exercise of religion, individuals deeply concerned for the protection of civil liberties would prefer protection of religious freedom to the maintenance of strict separation. This is not always the case, however, as witness Justice Rutledge's opinion in the bus fare case, and the position of the American Civil Liberties Union in all of the recent cases. Speculation is invited as to why absolute separation is supported in quarters such as these, apparently regardless of the resulting restraint of religious liberty."

Professor Edward S. Corwin of Princeton University, in *Thought,* for December, 1948, under the striking and accurate title, "The Supreme Court as National School Board," published a scholarly exposure of the errors of the Supreme Court Justices in the McCollum case. In this article he said: "It would seem that the decision in the McCollum case amounts to a law prohibiting the 'free exercise' of religion—a type of law which is in definite words banned by Amendment I!"

The Fear of Catholicism

Professor Kats suggests: ". . . the fear of Roman Catholic religious oppression" or ". . . distrust of the position of the Roman church as to religious liberty" is apparently the cause of much of the insistence upon the absolute separation of church and state. With the qualification that I would say that the "fear" and the "distrust" Professor Kats mentioned are the result of misinformation and misunderstanding, I should agree completely with him. This misunderstanding and misinformation are largely behind the insistence upon the totally unrealistic political theory

of absolute and complete separation of government and religion, or church and state. This concept has never been put into effect or even been explicitly stated in the laws and constitutions of any nation, so far as I have been able to discover. Certainly it has never been so treated by the federal government or the government of any state.

In explanation or justification of this fear, which is confusing legitimate educational discussion, Professor Kats refers to the famous statement of Monsignor John A. Ryan to the effect that "Constitutions can be changed, and non-Catholic sects may decline to such a point that the political proscription of them may become feasible and expedient." He also mentions the opposing opinion of Father Robert C. Hartnett, S.J., and Professor Jacques Maritain. However, he doesn't sufficiently bring out the fact that the position of Monsignor Ryan has been objected to by many Catholic scholars for decades.

Professor Kats concludes: "In view of these facts and in the absence of any authoritative and explicit repudiation of the line of teaching illustrated by Msgr. Ryan's statement, it is not surprising that issues like that presented by the bus fare case are usually discussed in an atmosphere of distrust." I am unable to undertand how there could be any "authoritative and explicit repudiation" of Msgr. Ryan's position. Every informed person probably knows that there are Catholics who believe that there should be a severe restriction upon non-Catholics in a country in which the Catholics have the power to do that. And every informed person also knows that there are Protestants, particularly in present-day Sweden, and historically in every Protestant country of Europe, who believe in and practice, or did historically, severe restriction on their Catholic minorities. In other words, this is an attitude of certain members of the human race, regardless of the religion to which they belong. Msgr. Ryan had a right to the free expression of his opinion, as the large group of Catholic scholars who take an opposite position have a right to their position and opinion. The difficulty here is probably the continuance of the ancient bugaboo that there is only one

Catholic position on all sorts of questions, particularly questions concerning specific measures for dealing with minorities in Catholic countries.

Neutrality in the Public Schools

Concerning the present situation of religion in the public schools in the United States, Professor Kats makes the interesting observation: "As to public schools, the problem of neutrality may be stated as the problem of keeping the school secular (*i.e.,* ruling out any attempt to inculcate religious belief) and yet avoiding inculcation of secularism (*i.e.,* a philosophy of life which leaves no place for religion). Such neutrality is not easy to achieve."

I should say that the problem of neutrality between secularism and religion in public schools is quite impossible when the public schools are operated on the basis of a philosophy of secularism; that is, as a secular institution *per se*. In that situation there is no neutrality. The machinery of public education is operating in favor of a single attitude toward religion, namely, the attitude that religion is either foolish or irrelevant.

As one who has spent forty years as a teacher in public education, in every grade of public education from the first through the graduate schools of great universities, I can testify that I doubt if there are many people who have had much experience in public education who would not agree that the religious impact of public education (where there is any, which is not often), is probably in most instances in favor of secularism as above defined. This does not mean that most public school teachers attack religion or do anything consciously to undermine the religious faith of any of the students. However, a public school system operating under the implications of the McCollum decision would probably be one in which secularism is "established," and in which religion is discriminated against.

However, the McCollum decision is so incapable of rational defense, so widely ignored, and so nearly wiped out by the

Zorach decision that any influence it has had so far will doubtless soon disappear. I doubt whether most public schools constitute any greater danger to faith and morals than is encountered in most regular jobs and professional employment. Among possible effective agencies for inculcating moral principles I put the home first, and the school close to the bottom of the list; any effect on moral habits which the school does have is much more due to the influence of the students than to that of the teachers.

Dr. Conant on Religious and Public Education

The most influential person recently to join the forces opposed to religious education in America is probably Dr. James Conant, former President of Harvard University. In his book, *Education and Liberty* (which I reviewed at some length in *Social Order,* September, 1953), Dr. Conant takes some thoroughly unrealistic positions. For instance, he remarks "that the local responsibility for education which resides in the various community school boards constitutes an insurance against state-imposed uniformity." He feels that this is adequate protection against regimentation imposed by the government on all American children. He alleges that "each state is the sovereign power in regard to schools." This statement may cause readers to wonder if Dr. Conant is familiar with the decision of the United States Supreme Court in the McCollum case.

It seems clear that if the Court is to continue to act as Professor Corwin said it acted in this case, as a super-board of education for the whole country, so far as public schools are concerned, then Dr. Conant should abandon his idea that each state is sovereign in regard to schools. Clearly, local school boards will lack power to carry out the results of the democratic procedures of either the state or the locality if these procedures happen to run contrary to the private opinions of the men on the supreme bench. If this is to be the pattern in our public education, then quite obviously the only opportunity to continue

the American tradition of freedom of religion and education, so far as the school are concerned, will be found in our religious and private schools.

A second particularly unrealistic aspect of Dr. Conant's faith in public schools, as compared to religious and private schools, is found in his remark: "It may well be that the ideological struggle with communism in the next fifty years will be won on the playing fields of the public high schools of the United States." Anyone familiar with the attempts to get the ideology of communism from out of the American public schools in various places, and to prevent more of it from getting into them, as reported in the public press, and the absence of such reports concerning communism in religious and private schools, should again be impressed by Dr. Conant's ability to avoid the implications of reality.

In the third place, Dr. Conant writes: "Those youths today are really fortunate who can attend a local public secondary school where boys and girls with a variety of religious and economic backgrounds study and play together." This seems to me a pitifully inadequate basis for judging the quality of any school. I believe that most Americans who have much experience with children and schools will take the position that those are really fortunate who attend truly good schools—the best schools available. If decisions concerning their children are valid evidence of parents' opinions, then there is a widespread belief among Catholics, Jews and Protestants that in some localities the best schools are religious, while in other localities the best schools are public. I suppose that most American parents with an informed attitude toward the education of their children want to give them the best education possible. Children cannot be put into cold storage to wait ten years until the local school situation changes to something desirable. Children have to go to school at the right age, and they have to go to schools available to them. Not only that, but thoughtful parents believe commonly that some of their children are better off in one type of school and some in another. The idea that all children are alike and react

most favorably to identical school surroundings seems to me to be a position that can hardly be held by the parents of more than one child.

The Constitution and laws of our lands seem universally to agree with ancient teachings of the Catholic Church, and with the "principles implicit in a scheme of ordered liberty" (a frequent phrase in Supreme Court opinions) that the primary responsibility for the upbringing and education of children is that of the parents. So long as we remain a somewhat free society and preserve freedom of religion and freedom in education, American children will go to the schools which their parents select for them—whether they are public or private, religious or secular.

Dr. Conant seems to assume, with no evidence of any kind cited to back up the assumption, that the public schools are better teachers of democracy than are religious or private schools. In this he is echoing the attitude of a number of modern propagandists to the effect that the trend, to develop the parochial school system in this country, is anti-democratic, or is destructive of the public school system. Some of them use the term "divisive"—stating that the operation of religious schools is "divisive." Dr. Conant says: "The greater the proportion of our youth who fail to attend our public schools and who receive their education elsewhere, the greater the threat to our democratic unity." He clearly assumes that if the religious schools were not available, the public school would be satisfactory. There must be thousands of American communities without religious schools where public schools are deplorable. Dr. Conant offers nothing, literally nothing, in justification of these assumptions. It seems obvious that if a non-public high school is a threat to American democracy, then Harvard University as a great non-public university must be a much more potent threat. But Dr. Conant specifically exempts colleges and universities from his uncomplimentary remarks.

According to Benjamin Fine in the New York *Times,* Dr. Conant in a speech in Boston, on April 7, 1952, after taking the position that religious and private education threaten American

unity, also said that the dual system of education, religious and public, is endangering "the American principle of single public school system for all youth." There is no such American principle and there never has been. But government-controlled education for all youth is a necessary aspect of all dictatorships.

Oppostion to Dr. Conant's Position

Dr. Conant's position has been severely criticized by educators and religious leaders. President Harold W. Dodds of Princeton University was quoted in the press "in opposition to former Harvard President James B. Conant" as follows: "When it is no longer possible for a man to find a school for his boy except within a universal state system, it will be too late to worry about freedom as we have known it, for it will be gone. . . .

"Is secondary education so different from most other aspects of life that private enterprise must be squeezed out completely? Are there to be no schools but State schools? Can nothing be democratic that the State does not monopolize?

"The power of the State to enforce minimum standards of education for all is not in question. The power of the State to monopolize the field and remove all competition is, however, a horse of another color."

Stating that he was "fully aware of the tremendous services which our far-flung system of tax-supported education has rendered," Dr. Dodds criticized U. S. schools for neglecting academic scholarship and discipline of the mind while falling under the influence of "technology and materialism."

"Unfortunately, when we come to view America's vast system of tax-supported education we are bound, I fear, to admit that, with all that it has to its credit, it is not fulfilling its duty to the mind.

"The privately sustained school, college or university is sadly needed to help keep alive and nurture the spirit of liberal learning in an age drifting into a pervasive materialism which threatens to ruin our whole school system."

In reporting the Fiftieth Anniversary Convention of the Religious Education held in Pittsburgh in December, 1953, the Religious News Service said:

"Very Rev. Paul C. Reinert, S.J., President of St. Louis University, proposed that religion be 'restored to intellectual respectability' by making it a part of the curriculum of every college. He said a 'misinterpretation' of the principle of Church-State separation has prevented such a program. If religion were a college course, the Catholic educator said, 'teachers who are opposed to religion would not have the field to themselves as is true in the present situation. . . . Religion would be restored to intellectual respectability and prestige in American college life.'

"Dr. Luther A. Weigle, Dean Emeritus of Yale University Divinity School, attacked the 'extreme interpretation' of the separation principle which 'outlaws God in the State.' He decried 'attempts of educational theorists to foist their atheism—or their non-theistic humanism, as they prefer to call it—upon the schools and colleges.' He attacked 'the disposition to expel God from both government and education as an illegal entry.' He lashed out at 'educational theorists' who make an 'extreme interpretation of the principle of the separation of Church and State,' and called on 'those who believe in American democracy and who have faith in God' to rally against this theory.

"The Protestant theologian charged that the trend of separation in America is toward the kind of separation which Russia enforces. 'The Russian conception . . . is completely alien to our history and heritage as a people,' he said. 'Is that what we want in America?' "It is not the U. S. government which maintains 'such a neutrality' between religion and education, but a group of leaders in public education, Dr. Weigle said. 'These leaders tell us that belief in God is necessarily and wrongfully authoritarian in character, that there is no absolute truth or value or obligation . . . ,' he said.

"He added that the interpretation of separation of Church

and State held by such educators is a 'falsification of history produced by methods of handling the evidence which would shame any competent graduate student.'

"Dr. Abba Hillel Silver, Rabbi of Congregation Tifereth Israel, Cleveland, third speaker on the opening panel, urged a 'religious reorientation' not 'relegated to the church or Sunday School.'

"Another speaker was Very Rev. Vincent J. Flynn, president of the College of St. Thomas, St. Paul, Minn., and past president of the Association of American Colleges. Father Flynn, commenting that 'a Catholic is untrue to his principles unless he has a very great interest in public education,' urged 'a common effort to restore religion to the place it once enjoyed in the curricula of all our American schools.' He said the interest of the Catholic in public education is selfish—because a 'great many' Catholics are in public schools—and also stems from a desire for good schools for 'our non-Catholic neighbors.' 'This means that we want good, religious men and women teaching in the public schools as well as private,' Father Flynn said. 'It means that we must work with such organizations as the Religious Education Association and the American Council on Education to find ways and means of improving the religious and moral content of public education.' "

"Divisiveness" and Co-operation in Education

So long as we remain potentially a free society it is inevitable that parents will differ in regard to the education they want their children to have, and they will have the kind of education for their children which they want, if it meets common standards of basic knowledge and skill. The way to stop the idea of divisiveness in education in America is to stop pretending that the very heart of American freedom inevitably promotes divisiveness, to stop pretending that we cannot have unity without a uniformity, to stop pretending that there is something evil in the American

concept of a complex society of cultural pluralism, of the right to be different; in short, of our basic concept of freedom.

Intelligent co-operation of all segments of our diversified population for the best possible education for all American children would be helped (and American Catholics could join in the inevitable controversies in a happier frame of mind if not subjected to the current barrage of misrepresentation and insult), if we could get more Americans simply to learn the truth about the following: (1) The character and quality of Catholic education in the United States (and to worry less about what they think is Catholic education in other countries). (2) The attitudes and desires of American Catholics in regard to public schools. (3) The extreme differences of opinion among American Catholics on about every conceivable question in social policy or legislation—including education. (4) The unfortunate results of believing the unsupported slanders of American Catholics which have been distributed so widely and so frequently.

Both religious education and public education have great contributions to make to our complex culture. People who believe in that complex culture, and who believe in American freedom and American democracy, personal freedom, religious freedom and freedom of education, should recognize the fact that we are going to have both religious and public education in this country, and should work for the improvement of both kinds of schools.

Public Support for Religious Schools

Does this mean that religious schools in America could have, or should have, the same amount and kind of public support as is now given to public schools? I do not believe so. I doubt if there are very many Americans of any creed or any party who believe that the religious schools of this country should have the identical public support now furnished to the public schools. I believe emphatically (and I have agreement explicitly stated by

a number of leading Catholic educators, clerical and lay, to the effect) that if the Catholic educational authorities of this country were offered equal public support with the public schools they would decline to accept it.

There is clearly no one Catholic position of the matter of public aid to religious schools. Some Catholics flatly object to any public support of religious schools. Many Catholics, and many non-Catholics, approve of public support for auxiliary services to pupils—such as bus rides, school lunches, medical services, non-religious text books, etc. These services, of course, have been approved by the United States Supreme Court as not violating the federal Constitution. Some Catholics approve of federal aid, or public aid, to religious schools in areas of need—that is, in the poorer sections of the United States. Here they probably would be particularly interested in Negro education in the South. I suppose it is possible that some Catholics could be found who approve of full public support of religious schools on an equality with public schools, but I do not know of any.

So far as I know, no responsible Catholic spokesman is asking, or has ever asked, for full support of Catholic schools from public funds. Certainly, those who assert that Catholics demand this, or are scheming to secure it, never cite any evidence of the truth of the assertion. Since no such proposal has ever been offered for debate or action, there is no way of knowing how either Catholics or non-Catholics would divide on it, or what the prevalent reasons for or against it would be.

Social Service of Religious Schools

The position that schools under religious auspices are not entitled to any sort of public support from tax funds would be in conflict with any well-understood theory of basic, universal, distributive justice, as endorsed by Catholic philosophy. This obviously does not mean that they would be entitled to exactly the same kind or amount of tax support as that given to public

schools. Since religious schools (Catholic, Protestant, and Jewish) perform a tremendous public service at an annual saving to the taxpayers of many millions, there can hardly be any theory of justice which would deny the propriety of public payment for public service rendered.

It would be helpful to rational discussion of this general question, if each person engaged could know, and keep in mind, that (in spite of widespread assertions to the contrary) American Catholic authorities have never asked for any special privilege for Catholic schools that would not be available on identical terms to other religious schools.

Savings to Taxpayers

According to figures prepared by the National Catholic Welfare Conference, there were in 1945-1946, 2,607,879 pupils in Catholic schools. The United States Office of Education publishes a table (*Statistical Circular 255*) giving the "*per capita* expenditure in public schools, 1946-1947" of public money for each state and the District of Columbia. By multiplying the number of pupils in the Catholic schools of each state by the *per capita* expenditure of public money in the public schools of the state we get a good estimate of the savings to the taxpayers of each state by the existence of the Catholic schools which are training so many of the children of the state without public expense. The total saving of public money by the existence of Catholic schools in this one year, 1946-1947, arrived at by adding the state totals, was $488,750,292. It seems safe to say that at the present time the Catholic schools alone, among the religious schools of the country, save the taxpayers of America over $500,000,000 each year. And this does not include the capital investment in land, buildings and equipment.

Mr. Lazarus Joseph, recently comptroller of the City of New York, in a speech in which he advocated public assistance to the Catholic parochial schools of the city, said that these schools

saved the city $110,000,000 annually, and that without this assistance from the Catholic school system the City of New York would now be bankrupt.

There seems clearly to be no proper basis in any well-grounded theory of general welfare or social service for denying any payment at all from tax funds to religious schools. Since it is traditional and legal to use public funds to pay for public service rendered by hospitals, sanatariums, orphan asylums, etc., under religious auspices, it is difficult to find valid social principles that would exclude similar payments for services rendered by religious schools.

State Laws and Constitutional Provisions

In discussing this, or any other, aspect of the school situation in America, it should be held in mind that the same laws that *require* children to go to public schools (when their parents have selected public schools for them) *require* other children to go to religious schools (if their parents have selected religious schools for them).

It is true beyond question that every state is now aiding, and always has been aiding, religious education in various ways. They have not been doing it in all conceivable ways, but they have been doing it. So has the federal government. In the various states, tax exemption, and attendance laws enforced by public officers, applicable to parochial schools and private schools on exactly the same terms as to public schools, are fundamental ways in which the states are promoting religious education.

It seems clear, in the light of our total constitutional history (the McCollum Case alone excepted), and in the light of the history of the United States as a whole (the record of Congress, Presidency, and Supreme Court) that state constitutions and laws contain the only controlling provisions in regard to what shall be done in state educational systems. Wherever an individual Catholic, or a committee of Catholics, attempt to circumvent

these state laws or constitutions to gain what is thought to be an advantage for Catholics (unless the laws or constitutions are such as to violate the conscience of persons who have a moral code), this activity is almost certain to hurt the Catholics it is supposed to help; and it violates the teaching of the Church as well as the laws of the country. Obviously, none of this applies to such conduct as refusing to accept such "interpretations" as the reckless assertions of P.O.A.U. as to what the laws and constitutions provide.

The only part of the Constitution of the United States that may perhaps have a bearing upon state conduct in education is in the Fourteenth Amendment. That Amendment provides that no state may deprive any citizen of "liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has been holding for decades that the liberty which the Fourteenth Amendment protects from invasion by the states is the liberty that is "implicit in a scheme of ordered liberty"—the fundamental personal freedoms that are inherent in the nature of a free society.

So long as the Supreme Court acts consistently with decades of precedent, the only constitutional way in which activities of state educational systems can be upset by action before the Supreme Court is to demonstrate that the action protested against deprives some one of liberty—fundamental liberty or property—without due process of law. Clearly, nothing of this sort was even attempted in the McCollum case—the only decision of its kind in Supreme Court history.

It is much more important that constitutional democracy be preserved in this country than that particular local political measures or educational practices be either sanctioned or disapproved. How children get to school in New Jersey, or whether or not religion will be taught in public school buildings according to the released-time plan in Champaign, Illinois, seem to me to be of trifling importance in comparison with the question of whether the Constitution of the United States, adopted by the

American people, will be observed or thrown aside for the private predilections of members on the supreme bench in regard to what they think is wise in public education.

Further, the widespread resentment over the McCollum decision, and the consequent disregard of its implications by local school boards (exercising the sovereignty Dr. Conant mentioned, in defiance of a Supreme Court decision), creates an unhealthy situation and promotes contempt for the Constitution and for all law.

The Zorach Case

The decision in the McCollum case has already begun to disintegrate. In fact, in the opinion of some well-qualified observers, the decision in the Zorach case, April 28, 1952, left little life in the McCollum decision. The Zorach case, as stated in the Court's opinion, concerned a New York City program which allowed the "public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises."

The opinion of the Court was given by Mr. Justice Douglas. The Court said there was no "issue of the 'free exercise' of religion" in the case, and that "our problem reduces itself to whether New York by this system . . . has made a law 'respecting an establishment of religion' within the meaning of the First Amendment." To ask this question as simply as this would seem to suggest only one possible answer—"No." This was the answer of the Court. But Justice Douglas did not let it go at that clear, short, and correct answer. He wrote the following, in the name of the Supreme Court: "There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no

exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other."

The almost total confusion in this passage is doubtless due to the fact that Justice Douglas was trying to do the impossible —reconcile in intelligible English this sound decision with the reckless language in which the Court spoke, and he concurred, in the McCollum case. Consider: The First Amendment, in the matter of religion, has only two clear, specific phrases: one, Congress shall make no law about "an establishment of religion"; and the other, Congress may not prohibit the "free exercise of religion." Justice Douglas says that so far as interference with these is concerned "the separation must be complete and unequivocal." But this is the whole of the First Amendment's religious doctrine—the total "scope of its coverage"—which he says "permits no exception; the prohibition is absolute."

The wildest and most unlearned advocate of the doctrine that the Constitution provides for absolute, complete, unequivocal, permanent, and eternal separation of church and state, protected by a wall high and impregnable, could ask for nothing more—unless, perhaps, an "interpretation" calling for the execution of any citizen who expressed a doubt as to either the wisdom or the constitutionality of this doctrine.

Now look at the last half of the above quotation from the Court's opinion. Notice how completely, absolutely, and unequivocally it denies all that goes before. To the Court, as it said a bit further on in this opinion, "The constitutional standard [which could be found only in the First Amendment] is the separation of Church and State." And the Court has just said that the *separation* in the First Amendment must be complete, unequivocal, and absolute. But in the next sentence we read that the separation declared in the First Amendment is not separation "in every and all respects." Justice Douglas does not try to explain what are the "respects" of a separation that are not

covered by a separation that is absolute, complete and unequivocal.

The climax of this "logic" is the next sentence. The Justice is referring to the establishment clause, "Congress shall make no law respecting an establishment of religion." Concerning this short and simple language, the Supreme Court of the United States says that "it *studiously defines the manner, the specific ways* in which there shall be no concert, or union, or dependency one on the other" between church and state. How can anyone pretend to find in the establishment clause, any "studious definition of manner" or any "statement of specific ways" of doing anything?

In the next paragraph Justice Douglas recognized that the sort of complete separation given first above is contrary to many practices of the federal government, and of the states, throughout history; in short, that *complete* separation of church and state has never been either adopted or practiced in this country. It is actually only an impractical, unreal, untried formula of strategy of persons who wish to twist the Constitution to their own highly personal ideas of what is good for other people. But he tries not to say this in so many words, apparently because the Court has so recently said the opposite in the McCollum case. So, in trying to reconcile McCollum and Zorach, the Justice acts like a butterfly in a whirlwind.

Finally, he upholds the New York system of released time. This system does not differ from the system involved in the McCollum case in any way that was given the slightest attention in the McCollum decision. That case was based on the use in certain ways of the public school machinery to help spread religion. This case has the same factors. Rationally, they would have to stand or fall together. But Zorach has not quite brought McCollum down to earth. McCollum is still dangling on the limb of the Justices' "prepossessions" in the field of education.

To preserve Constitutional democracy, we must maintain the integrity of the Constitution against all comers—even Justices of the Supreme Court. The Constitution should not be "interpreted" out of its legitimate meaning to satisfy any group, large or small.

I wrote as follows in *Thought,* September, 1949: "I object to the idea that informed American Catholics can, and do, properly take positions in regard to the First Amendment or the Supreme Court decisions concerning it, which are different from those of other understanding Americans who believe in constitutional democracy.

"If the American people ever put into the Constitution a provision that is hostile to religion in general, or to Catholicism in particular, I should expect every honest American Catholic to defend the Court for finding that provision in the Constitution, and to denounce the Court if it distorts the Constitution to make it say the opposite. To take any other position seems to me to qualify one for membership in Protestants and Other Americans United. There is not now any such provision in the Constitution. The best way to get such provision put into the Constitution is to take the position that there are Catholic interpretations, or special interpretations that are, or should be, favored in Catholic circles; in other words, that the Constitution properly means something to informed Catholics that it could not be expected to mean to informed non-Catholics."

If one Court can be justified in applying a figure of speech from a letter of Thomas Jefferson, another Court obviously can apply phrases picked out from letters of Franklin Roosevelt, Herbert Hoover, Woodrow Wilson, or Warren Harding, and offer them as the Constitution instead of the language that has been ratified by the American people. On this concept of the Supreme Court's freedom to "apply" something else in place of the Constitution, some future Court can choose Jefferson's statement in the important document in which he was specifically and responsibly discussing *religion in public education,* written

thirty-one years after the ratification of the First Amendment, and twenty years after his letter to the Baptists of Danbury in which he mentioned the "wall of separation." (See pp. 84-85.)

On the basis of the McCollum decision as precedent, a future Court will be free to assume that this passage from Jefferson necessarily expresses the meaning and purpose of the religious clause of the First Amendment. They can then decide that this means that the public authorities in the public schools must require instruction in religious opinions and the duties man owes his Maker as most incumbent on the pupils' study and investigation. Such an assumption and conclusion would do less violence to historical fact, language, logic, and the philosophy of Thomas Jefferson than was done in the McCollum case, and it would be in full accord with the traditional practice of the American public school system for about its first seventy-five years.

If we are to continue to live under a government of laws, and not of men, then we must see to it that a dictatorship of the majority of the nine men on the Supreme Court, unrestrained by the provisions of a written Constitution, is not allowed to defeat democratic decision in public education, or to limit the civil liberties of the people of the United States.

Three General Convictions

Let me make it perfectly clear that I am not arguing for or against any particular type or extent of public support or aid for religious schools. I should have to see the exact text of any bill, and to study its precise provisions before I could know whether I would be for it or against it. How much aid? How provided? For what purposes? With what supervision or control? Under what constitutional provisions or what state laws? I should have to be satisfied that all of these matters were properly covered before I could endorse any bill that might be proposed in a state legislature or in the Congress of the United States. I have, however, three basic general convictions on this general subject.

First, there is no single Catholic position in regard to any of the matters I have been discussing. There are probably about half a dozen different positions that are taken regularly by informed and serious Catholics. When the Taft Bill for Federal Aid to Education came to vote in the House Committee in Congress recently, there were six Catholics on the Committee, and they divided for and against the bill exactly three to three.

The second general position is that there is nothing whatever in the Constitution of the United States that was ever designed to or does legitimately prohibit impartial public aid to religion or religious education. This does not mean that every possible attempt at aiding religion or religious education is sound or wise and should be approved. It means that this is simply a legislative problem and that the Constitution contains nothing which prohibits anything of the sort. The only activities the Constitution prohibits, in the field of religion, are: (1) the setting up of "an establishment of religion" for the United States of America, that is, giving a preferred monopolistic position of favor to one religion at the hands of the United States government; (2) federal laws prohibiting "the free exercise of religion"; (3) in the Fourteenth Amendment, action by a state depriving any one of liberty in religion "without due process of law"—and liberty here, according to the Supreme Court, means a violation of one of the fundamental personal freedoms that are implicit in a scheme of ordered liberty, the basic personal freedoms that men must have a free society.

My third basic position in this area is that the arguments, assertions, and assumptions used currently against government aid to religion or to religious schools violate the unambiguous facts of history, biography, language, and law. These arguments and assumptions are contrary to the language of the First Amendment, contrary to the positions of both Madison and Jefferson, contrary to the positions of all Presidents in the history of the United States, contrary to the position taken by all Congresses in our history, and contrary to the position taken by the Supreme

Court of the United States in every relevant decision except that in the McCollum case.

If, under the freedom of the federal Constitution, and in conformity to its own constitution and laws, any state in the union desires to do more than it is now doing for religious schools, on a basis of complete equality, of course—Catholic, Lutheran, Jewish, Baptist, Presbyterian, Episcopalian, etc.—there is nothing in the Constitution of the United States, or in the *American* tradition of the separation of Church and State, to prevent that action being taken. Whether or not it should be taken is clearly something for the citizens of the state to decide, just as it is for the citizens of each country to decide what kind of a system of relation of religion and government they will have in their country. And the people of one state should not be expected to approve or disapprove of the activities of the citizens of another state, any more than American Catholics, or American Protestants, should be called upon to approve or disapprove the relations between church and state in other countries of the world.

6.

Catholics and Censorship

CENSORSHIP AND FREEDOM are opposites. The basic idea of censorship is not easily accepted in any free society and it should not be. Censorship is the limitation of the freedoms of speech and press upon which the defense of all other freedoms depends. It follows logically, and is confirmed by universal experience, that all dictatorships, tyrannies, totalitarian governments, in obedience to the law of self-preservation, and in total disregard of the principles of freedom, exercise extreme censorship. Obversely, any free society that wishes to remain free must hold censorship to the absolute minimum that may be required for national defense, public order, and morals. Clearly, any society that cannot maintain public order and public morals cannot be expected to be capable of national defense and probably would not be worth defending anyway.

Organized society always is, in important ways, necessarily a limitation on the absolute freedom of the individual. That is, it is the antithesis of anarchy. So, organized society has always placed a certain limitation upon individual freedom. In our tradition, going back to the common law of England, there has always been some censorship, and there has never been, certainly in England and America (and it is probably safe to say not in any country having an effective government), absolute, unlimited freedom of speech or freedom of the press.

Since censorship is basically antithetical to freedom, it has become in our country quite naturally what might be called a "fighting word"—as it should be wherever people have freedom. It is a "loaded" word, heavily loaded with emotional power, and so is frequently used inaccurately, as Communists use "democracy" to gain illicit advantage with the careless or the uninformed.

Illicit advantage is being sought currently by spreading among the biased and the uninformed the impression that the Catholic Church in America, or the Catholic hierarchy, is tremendously active in the field of censorship. False cries of "censorship," therefore, have been raised against Catholic persons or organizations in connection with the Moving Picture Production Code, the Legion of Decency, the National Organization of Decent Literature, the activities of certain neighborhood committees in regard to the elimination of lascivious publications in the neighborhood.

Concerning the matter of "Catholic censorship," Prof. Nichols seems wholly unrestrained: "More significant, although less conspicuous, than the Roman Catholic social program were the tactics used in advancing the social and political ambitions of the Roman bishops. These tactics consisted in the use of totalitarian techniques of censorship and terrorism against the freedom of communication and discussion essential to the continuance of democracy. Catholic Action, as manipulated by the episcopate . . . took effective measures to silence discussion and prevent general knowledge of unwelcome truth. This is the unforgivable sin of liberal democracy. . . . The censorship by boycott, which terrorizes virtually every American newspaper, book publisher and distributor, magazine publisher, movie producer and theatre owner, newsstand owner and librarian, is far more widespread and more morally corrupting than is generally realized. It withdraws a sixth of the American people from participation in democratic policy-making by making it a sin for them to listen to the other side of any social or political issue where the prelates have taken a line. . . . The hierarchy was elaborating totalitarian techniques for controlling all means of public communication and for foreclosing the possibility of democratic discussion."

The climax of this assortment of false, insulting, and totally unsupported charges against American Catholics is the following from Professor Nichols: "the Catholic church holds such

control over the means of communication—press, radio, and screen—that it is unlikely that much will henceforth be heard through them against the Roman church. Non-Catholic America is now silent on the subject of the Roman church and somewhat apprehensive of this new leviathan squatting in the Puritan heritage." Professor Nichols must know that newspapers and periodicals are well furnished with attacks upon American Catholics; he must also know that the book-publishing business is turning out a large number of books filled with the same kind of unsupported and false charges against American Catholics which so often characterize his own volume. Professor Nichols' book is not only an indication, but a demonstration, of the absence of Catholic censorship.

What Is Censorship?

Any activities that can properly be called censorship consist of one of two types of governmental interference with freedom of press and speech. First, it is the action of an official person or group empowered by the government to examine written or printed matter or films with authority to forbid publication, circulation, or representation, if the matter examined contains anything contrary to the terms of the statutes setting up the censorship authority. The second type of genuine censorship is the effect, as threat or warning in restraint or suppression, of laws that prohibit, and provide punishment after the fact, for publication, circulation, or representation of books or other printed matter or films that violate the specifications of the law. These are usually specifications prohibiting any obscene, immoral, lascivious, or blasphemous material.

An example of the first type of censorship is the activity of state boards of moving-picture censorship, as, for instance, in New York State, where the power of censorship is placed upon the Board of Regents of the public school system of the state. The Regents are empowered to, and required to, examine moving picture films and give a license for showing to any film

which is not "obscene, indecent, immoral, inhuman, sacrilegious or . . . would tend to corrupt morals or incite to crime."

The Gordon and Ulysses Cases

An example of the second type of censorship is the case of *Commonwealth vs. Gordon et al.* tried before Judge Bok in Philadelphia in 1948. This case concerned nine novels that had been published and certain booksellers (the defendants) "possessed the books with the intent to sell them." The charge was that the books were obscene and that offering them for sale violated the penal code of Pennsylvania. Judge Bok read the books and decided that none of them was obscene according to the proper interpretation of the law.

Writing in the *Saturday Review of Literature* for February 13, 1954, Judge Bok said of this case: "A few years ago I protected nine unpleasant books against the charge of obscenity. I do not remember putting in a more lugubrious six weeks than while reading them. Holding my nose with one hand, I upheld with the other the right of free speech that they represented. For this I got a certain amount of acclaim."

A slight variation on this second type of censorship is found in the laws empowering the customs officers and the Post Office to refuse to allow entry into the country, or distribution through the mails, of certain types of material, usually that called obscene or pornographic. Probably the most famous case of this kind was the trial of James Joyce's *Ulysses*. The original opinion of Judge Woolsey in the trial of this book and the opinion of Judge Hand in the Superior Court in approving the Woolsey decision, along with Judge Bok's opinion in the Philadelphia court, constitute the three court opinions which probably have set and crystallized the current legal situation in regard to the publication of obscene material. The current legal doctrine as expressed in these opinions is, first, that a book must be judged as a whole. Individual sentences or expressions which are admittedly obscene are not sufficient to bring the book under the obscenity laws of

the United States and the individual states. Second, the intent of the book as a whole must be judged to be that of "dirt for dirt's sake," that is, erotic allurement. It is a fairly common thing for those who object to the first type of censorship—the advance prohibition of publication or representation—to say that they are perfectly willing to be subjected to the second type—that is, to be called to account in court for any violation of obscenity laws after they have published their book or exhibited their movie.

"Unofficial" or "Private" Censorship

Under the general title of "unofficial" or "private" censorship there are discussed today many instances of personal or organizational activity which involve no governmental force of any kind. These are only the activities of members of a free society working within the framework of American freedom for the things they believe in for their society. It seems clearly inaccurate, improper, confusing, and detrimental to the effective discussion of actual censorship to consider the activities of private persons or organizations as *censorship* of any kind. Among the labels applied to such activities, by other free citizens who do not like these activities, are the following: industrial censorship, community censorship, private censorship, religious censorship, and pressure-group censorship. The frequent use of the emotionally loaded word "censorship" in these areas often gains for the user an advantage with the general public that he could not possibly achieve by using literal and accurate language.

Probably the best example of what the users of these terms mean by each of them would be about as follows: by "industrial censorship" they usually refer to the activity of the Moving Picture Production Code; by "community censorship" is meant such activities as those of certain committees in neighborhoods who try to arrange with local newsstands and drugstore distributors of printed material not to have so easily available—particularly to school children—certain books that they consider highly corrupting; by "private censorship" they usually mean the

denunciation of a book or a movie by some particular individual, such as a bishop in the Catholic Church; the same would apply to "religious censorship," except that probably the best example of this would be the activity of the Legion of Decency.

Under the general head of "pressure-group censorship" I have found criticism of such organizations as the following: The National Association for the Advancement of Colored People; the Christian Scientists; the American Legion; the New York Society for the Prevention of Vice; Daughters of the American Revolution; Jewish campus groups, unspecified; Hotel Employes' Union; American Bar Association, and the activities of various public bodies and administrative authorities, such as the administrative agencies of schools, colleges, parks, and police departments.

Certainly, any person or group is free to criticize or oppose the programs—any programs—of other persons and groups in America. The disliked programs, however, should be opposed for what they actually are, examples of the functioning of a free society, which is necessarily a society in which both sides have equal opportunity to advocate or oppose legal activities which they like or dislike. The use of mere epithets or inaccurate labels should not be employed by any one who believes in freedom and equality of citizens in a democracy. The democratic program should be: if the disliked activity is illegal, call a cop; if it is legal, take the other side and see if you can get your program accepted in the marketplace of ideas.

Catholicism and False Cries of Censorship

The relation of the outstanding examples of the "false cries" of censorship which have been mentioned above to the title of this book is indicated by the following: (1) The concern with what is called the internal Catholic influence of the administration of the Moving Picture Production Code; (2) the fact that the Legion of Decency, which is inaccurately referred to as a censoring organization, is a Catholic organization; (3) the fact

that the National Organization of Decent Literature, under whose aegis many neighborhood organizations attempt to clean up newsstand and drugstore magazine racks, is a predominantly Catholic organization; and (4) the fact that the local neighborhood committees which have been active in this respect in such places, for instance, as Brooklyn, as reported in the public press, are frequently, if not usually, Catholic committees; (5) the fact that Cardinal Spellman was inaccurately accused of attempting to exercise censorship in his criticism of the movie *The Miracle;* (6) the fact that the hierarchy of the Catholic Church was falsely accused of censorship when the Board of Superintendents of the New York public schools refused to resubscribe to *The Nation.*

I believe that it is accurate to say that in the majority of cases in which false cries of censorship are raised against individuals or organizations in this country there is an attempt made to make it appear that the Catholic Church, or Catholic officials, or Catholic organizations, are actively engaged in *censorship* in the United States.

Three False Cries

The work of the administrative staff of the Moving Picture Production Code is *editorial work*—not censorship. The activity of the Legion of Decency, the Protestant Motion Picture Council, and other organizations of that sort is *criticism*—not censorship. The activities of the National Organization of Decent Literature and of the neighborhood and parish committees which try to make arrangements with drugstores and newsstands in regard to certain publications which they think are detrimental to the neighborhood are *reactions of the market to disapproved merchandise*—not censorship. Criticism of, or opposition to, any of these activities is perfectly legitimate so long as it is honestly and accurately carried out by people who wish to take the other side on any of the questions raised by them. It seems particularly unfortunate, however, that in a great many, if not almost all, cases of opposition to the activities above mentioned there is

observable an extremely inaccurate use of language. Instead of discussing the activity of the Legion of Decency as perfectly legitimate, though mistaken, criticism of certain moving pictures, or the activities of neighborhood committees to try to lessen the flood of smut on the newsstands of the neighborhood as just that, the opposition is almost always phrased in terms of "censorship" of "unpopular ideas," "disapproved programs," "heretical opinions," "unpleasant facts," or "thought control," or "literature they don't like."

I think it would further promote the helpful discussion of genuine censorship by mature people, in any discussion from which they hope for more beneficial results than the irritation of their opponents, if the participants would make and keep clear distinctions among the following kinds of material: (1) slander, libel, incitement to riot, obscenity, pornography, blasphemy; (2) uncomplimentary books about, for instance, Mary Baker Eddy, Martin Luther, John Calvin, Henry VIII, Pope John XII, Cardinal Wolsey; or plays showing Negroes in an unfavorable or a favorable light; or movies exhibiting the shortcomings or the benefits of labor unions or big business.

If we could have this kind of discrimination, along with the abandonment of the attempt to discuss opposition to lascivious publications as an attempt at "censorship" of "unpopular ideas" and "thought control," it would probably help to get us nearer to an agreement among decent and thoughtful Americans in regard to how much, and under what conditions, we wish to tolerate any censorship in our society. Until and unless we can bring the discussion of censorship back to the use of accurate, realistic, literal phrases in the English language, and until we can free it from an attempt to persuade the public that legitimate opposition to various things that are opposed by some members of our society constitutes an attempt at "censorship" and at "thought control" by the Catholic Church, we shall probably never improve the present confused and almost hopeless situation in regard to handling the censorship problem in the United States.

As an example of false cries of censorship probably no other case is equal to that of the *Nation* when the New York City Board of Superintendents of the public schools refused to renew subscriptions to the *Nation* for school libraries in 1948. This action was taken because of the Blanshard articles which appeared in that magazine and attacked the Catholic religion.

Apparently with no attempt to find out the facts, a campaign took form which accused the Catholic hierarchy of censorship, claimed that the publication was "banned," charged that "the right to information, the right to opinion, the right of the American mind to be free from control . . . are under attack," asserted that this was a "conspiracy against thought" and "the menace of thought control," and arrived at the astonishing climax that "a constitutional right is at stake." The attorney for the *Nation* argued before the State Commissioner of Education that the dropping of the subscriptions was "in violation of the constitutional guarantee of freedom of the press"!

Mr. Blanshard joined in, declaring the action of the superintendents was an instance of censorship by the Catholic hierarchy. Even after Dr. Jansen, the Superintendent of Schools, denied in the press that there had not been even one request from a Catholic official for the board's action, a large group of distinguished people, following the reckless accusations of the *Nation* and Mr. Blanshard, quite evidently with no investigation of the facts, signed a document in "defense of the right of inquiry," which said that "one of the churches had exercised a simple veto" on materials for use in the schools.

Inevitably, the correction of the many misrepresentations in the campaign for the *Nation's* false position does not catch up with the false statements, and many commentators are still misled. For instance, Dr. Ralph E. Ellsworth, director of libraries at the University of Iowa, wrote in the *Stechert-Hafner News,* October, 1949, that "The New York Board gave in to pressure from powerful minority groups and is now too ashamed to admit

its mistake." Even so careful a writer as Dr. Anson Phelps Stokes, in his three-volume *Church and State in the United States,* speaks of "school library censorship," where there was no censorship; "canceling subscriptions," which was not the case, but only refusal to resubscribe; "because of articles by Paul Blanshard dealing in a critical way with positions taken by the Roman Catholic Church," where the articles were inaccurate and insulting attacks on the Catholic religion and American Catholics.

The American Library Association and Censorship

In the discussion of censorship in the meetings of the American Liberty Association at Atlantic City in June, 1952, and the news stories and comments arising out of these meetings, considerable violence was done to the English language in the use of the words, "censorship," "freedom of the press," etc. As summarized by Benjamin Fine in the New York *Times,* "Censorship of any kind, whether by church, government officials, or private individuals was denounced vigorously," by speakers at the librarians' meeting. Similar denunciations are common in the reports of other meetings of librarians in recent years. A more careful use of language should be found when librarians are speaking or being spoken to. Literally speaking, which is the way constitutions and laws speak, and should therefore be spoken of, any such thing as "censorship" cannot be exercised by church groups or private individuals in denouncing publications or advising against their purchase (whether stupidly or intelligently). Such activity by persons or organizations who cannot enforce their opinions by the police power of government is the same thing as the denunciation of these activities by the American Library Association. They are all, whether true or false, wise or foolish, simply instances of freedom of speech or of the press in a free country.

Spurious Appeals to Civil Liberties

In order to reach the members of that group of leading citizens who seem to be growing increasingly independent of the rules of the scholars and lexicographers, and who are thereby muddying the stream of human communication in order more fully and less competently to express their emotions, let us take the discussion of censorship into the realm of constitutional rights and civil liberties. In this area, a common pattern currently is for such organizations, labor unions, manufacturers' associations and religious, racial, and political societies, to protest that some part of the Bill of Rights is being violated whenever such an outcry seems a good way to oppose some measure or program which is distasteful to them. It would be helpful if such people would keep in mind that an action may be stupid, immoral, illegal, bad social action, or unintelligent administration, and not be a violation of civil liberties or of the First Amendment. If the advocates of certain positions would use these more accurate labels for actions which they disapprove, and stop attempting to make such disapproved activities into instances of censorship, they probably would be moving much more rapidly toward the kind of a solution of certain social controversies in which they are interested.

The Moving Picture Production Code Administration

While the Motion Picture Production Code was adopted in 1930, the Code Administration was set up only in 1934. Both of these actions were taken when Will H. Hays was president of the Motion Picture Producers and Distributors of America. Mr. Hays was succeeded by Eric Johnston in 1945.

Mr. Blanchard seems disturbed by what he calls "A considerable amount of internal Catholic influence" in the Moving Picture Production Code Office. "The industry's Production Code was written by one of the most aggressive Jesuit writers in the country, Father Daniel Lord, and the Production Administrator, Joseph I. Breen, is a Catholic."

The production code which the moving picture industry adopted in 1930 resulted from a request by the leaders of the motion picture industry to Mr. Martin Quigley, a well-known publisher in the moving picture field, to prepare such a code for their consideration. Mr. Quigley engaged Father Lord and they, with the co-operation of Mr. Hays, prepared the code which was adopted by the industry. The whole story of the preparation of the code, the threat of widespread state censorship which it was designed to head off, and of its adoption and application by the moving picture industry are all set forth in Mr. Quigley's *Decency in Motion Pictures.*

The fact that Mr. Quigley, Father Lord, and Mr. Breen, the present administrator of the code, are all Catholics does not constitute Catholic censorship of the movies. In the first place, their activity is not censorship, but editorial work, and second, the code which they administer is not a code of the Catholic Church but of the moving picture industry. It was not written or adopted by the Catholic Church. It was written by employees selected and directed by the Moving Picture Producers and Distributors of America and adopted by that association. The administrators of the code are employees of private industry; they work for private industry under the instructions of the private industry. Their work is practically identical with the work of the editorial staff of every book-publishing house in the country. There is no government authority of any kind behind the Production Code Administration. There is, therefore, no possible "censorship" in the proper sense of that word. The staff are editors only.

The Editorial Parallel

The staff of the Code Administration study books, stories, scripts, etc., that are being considered for use by producers, and on the basis of such editorial work rejects or approves, just as editors do in publishing houses, or recommend revision and resubmission after revision. If the material is resubmitted after

being done over, it may again be either accepted, rejected, or sent back with further suggestions for change.

It seems clear that so long as we have elementary freedom in this country any private business will be free to decide for itself (within the police laws and laws against adulteration, etc.) what kind of product it will offer for sale to the American people. More specifically, so long as any publisher in the country is free to hire the editors and editorial readers he wants, and to keep them on the job so long as he is satisfied with their work, and to publish or to refuse to publish manuscripts submitted to him, then the motion picture industry must necessarily be free to do the same thing.

The idea that the publisher of books may not, or does not, pay any attention to the moral impact of his product on the potential market is something which I suppose no person who is at all familiar with publishers and publishing could possibly believe. Whether the publisher pays attention to the moral problem because of his primary interest in the morals of his customers, or whether his primary interest is in the financial return to his business, is something that no one can decide except the publisher himself.

Moving Picture Censorship Laws

According to Joseph Breen, director of the Production Code Administration, six states at the present time have active censorship boards covering the motion picture field: New York, Pennsylvania, Maryland, Virginia, Ohio, and Kansas. In addition, Florida and Louisiana have laws which permit the setting up of censorship boards for moving pictures, but no organization has ever been created to carry out this responsibility. In Massachusetts, the censorship of motion pictures is exercised only for films intended to be exhibited on Sundays. In addition to the state censorship laws and boards there are about fifty leading cities which have city censorship.

The Code Administration was set up at a time when there

was a great deal of hostile criticism of the character of a number of moving pictures. These were offensive to many possible patrons of the moving picture theaters because of alleged obscenity, lasciviousness, immorality, indecency. The leaders of the industry decided it would be better for them to take charge of the situation, and establish some kind of rules and regulations for their product, than to have censorship boards set up in all the states and subject the industry to the varying standards, opinions, and decisions of forty-eight different groups of censors.

Elmer Rice on Censorship

The name of Mr. Elmer Rice is well known to most people who have been interested in the promotion of civil liberties of the United States for the last two or three decades. He has done valiant service for civil liberties, particularly for those civil liberties with which he is much concerned and the observance of which has his complete endorsement. In an article entitled "Entertainment in the Age of McCarthy" in the *New Republic* for April 13, 1953, Mr. Rice seems not only confused in regard to censorship but deeply depressed in regard to the conditions in this country at the present time. He writes: "The independent thinker has become suspect; most of those who still dare to mount the rostrum do so with trembling knees and an apologetic smile. The heretic or the rebel now rides into battle armed with an alibi. Every unpopular opinion or unconventional activity, every instrument of expression or communication must defend itself against the scrutiny which seems to be inspired by the Queen of Hearts' dictum 'Sentence first, verdict afterward.' "

Mr. Rice is writing of the "campaign against free speech" at the present time. Under the label "pressure group censorship" he mentions the activity of the Legion of Decency. Further, he says that the extra-legal police action and the abuse of the municipal licensing power often result in the suppression of plays, "particularly in cities that have predominantly Roman Catholic administrations or where the Roman Catholic com-

munity is numerous and influential." He writes: "I want to make it clear that I am not hostile to the Roman Catholic religion or the Roman Catholic church, except insofar as the latter makes improper political use of its power."

For my part I do not believe that Mr. Rice is hostile to the Roman Catholic religion or to the Roman Catholic church. He is probably as free from what would normally be called religious prejudice or bias as are most of the members of any religious group in America. However, it seems perfectly clear that he is mistaken in regard to what he calls the improper use by the Church of its political power, as well as in regard to what constitutes censorship in this country. He ought to know that extralegal police action even in a city in which the policemen or the whole population happens to be Catholic does not constitute political use of the Church's power, and he should know that the abuse of power on the part of Catholic members of a city administration cannot properly be labeled the improper use of political power by the Catholic Church.

Mr. Rice is concerned about the fact that certain plays which have been condemned by the Legion of Decency have a difficult time in certain cities in which the population and the city administration is predominantly Catholic, such as Boston and Providence. Of course, he is also opposed to the activities of Jewish organizations which prevented the exhibition of the film version of *Oliver Twist*. He takes the position that the legitimate theater has been relatively resistent to censorship, but he fails to see the obvious parallel between the activity of the Legion of Decency and its effect upon certain plays in certain cities and the activity of the dramatic critics in New York City and the effect of their criticism upon plays which they happen not to like.

I am confident that Mr. Rice and those who agree with him about the censorship of pressure groups cannot point to a single instance in which the criticism of plays or movies by the Legion of Decency, the Protestant Motion Picture Counsel, or other such organization has ever had as drastic an effect upon a production as the criticism of a few New York dramatic critics have occa-

sionally had upon a play. Anyone who follows a criticism of New York plays, as I am sure Mr. Rice does, must know that many plays are completely killed by the criticism of seven or eight dramatic critics in New York in a few days after they open.

For instance, the play called *Men of Distinction* was produced for the first time in New York on April 30, 1953. The play was characterized by Lewis Funk in the New York *Times,* for May 1, 1953, as "a tasteless bit of burlesque that might have made some sense as a brief sketch in a naughty review." And he reports that a certain gentleman of distinction is involved with a so-called socialite who is a procurer. "He also is closely allied with the metropolis' number-one racketeer. And to prove everything, Mr. Condon [the author] naturally shows us the expected party girls, and Mr. Folks [the designer] has provided for the girls the necessary revealing gowns." The overall verdict of the *Times* critic is that "there is not a single individual with a justifiable claim to intelligence, respectability, or humanness in the lot, and what makes matters even more unsavory for the theatre-goer is the unhappy fact that there is not a discernable purpose in this parade of depravity."

This play opened on Thursday, April 30. On Friday, May 1, it was reviewed by the New York press. It closed on Saturday, May 2. In a brief news item in the *Times* of May 4, Lewis Calta reported "the New York reviewers to a man found Richard Condon's first play about the unsavory doings of café society characters too impossible for their tastes." The New York reviewers "to a man" disapproved of this play in very frank language. That ended it. In all probability it will never again see production. The Legion of Decency could not possibly have brought about such speedy and total destruction of a play or movie as the sudden death of *Men of Distinction* resulting from the devastating and unanimous criticism from a small group of New York dramatic critics, each one expressing his subjective judgment, his private opinion.

Any rational case brought against the activity of the Legion of Decency as censorship must apply in identical terms, what-

ever they are, to the activity of the dramatic critics. Opinions as to which group is wiser, more competent, or has a larger following, are wholly irrelevant. The members of these groups are all equally free members of a free society, all are equally entitled to the constitutional freedom of speech and press. None of them can force anyone to follow his advice. If the work of one is permissible and presumably of service to those who like its comments, then the other is permissible and presumably of service to its followers.

Any situation that could be brought about either by state laws, court decisions, or pressure groups of the kind Mr. Rice likes, which would end the activities of church officials, church organizations, or committees, who study movies, plays, and books and characterize such material according to their private opinions, should (and probably would) end the activities of dramatic critics and book reviewers.

It is interesting to note that Mr. Rice seems to arrive rather reluctantly at much the same conclusion, though he does not phrase it this way. He says: "Even when official censorship does exist, it can be attacked in the courts upon Constitutional grounds, and as the decision in *The Miracle* case demonstrates, can be weakened and eventually abolished. No such legal control can be exercised over the 'self-regulatory' practices of private industry. The motion picture codes have the effect of strangling freedom of expression to a degree that no political censor would dare attempt." It should be obvious that the strangling of freedom of expression by the motion picture code is the precise parallel to the strangling of freedom of expression by the editorial staff of the great publishing houses in New York City, except that the publishers do not employ a joint staff.

Mr. Rice continues: "It all sounds rather hopeless; but it is not altogether hopeless. The remedy lies in the assertion by the American people of their constitutional right to speak, to see and to hear, (even what may be, by some, considered evil). The entertainment industry is susceptible to pressure by the majority as well as by the minorities . . . It is about time we stopped

having the jitters about every breath of adverse doctrine or criticism; about time we recovered our courage and our sense of humor (maybe the two are not unrelated); about time we discovered the good old American practice of free and unlimited discussion, and awoke to the fact that you do not effectively fight other people's absolutism by setting up one of your own."

The assertion of the constitutional right to speak obviously applies to the Legion of Decency, the Protestant Motion Picture Council, and other similar groups, as well as to any committee or group with which Mr. Rice is associated. I particularly recommend a strong dose of the medicine Mr. Rice prescribes: "Stop having the jitters about every breath of adverse doctrine and criticism." Recover *your* courage, and *your* sense of humor, and recover, or develop in addition, a devotion to accuracy and logic. Stop calling free expression of opinion in a free society censorship. It might be well to apply a bit of plane geometry: things which are equal to the same thing are equal to each other. Since the pronouncements of the Legion of Decency, and Cardinal Spellman, the American Civil Liberties Union, and Mr. Rice are all equal to common instances of freedom of speech under the Constitution, they are all equal to each other, and they should all be so treated by all Americans who really believe in equality before the law, the right to be different, and the principles of the Bill of Rights.

Shall Censorship Be Either Reduced or Abolished?

Americans should decide whether or not they want all censorship abolished in this country, except the restraint upon obscenity *after the fact,* to be decided by a jury of twelve citizens. If it is desirable to save this type of censorship, the next step is to see if it can be distinguished from the Supreme Court Decision in *The Miracle* case. In that case the principal ground on which the law was declared unconstitutional was that it required only "a censor's conclusion" or a subjective decision of a small group of men.

If inaccuracy, confusion, and inconsistency could be eliminated, and true censorship could be separated from the ordinary inevitable controversial expressions of the members of a complex and free society, some improvement in the censorship situation might result, and censorship might be held to the absolute minimum which a democratic society requires for the protection of national safety, public order, and morals. Probably we could all live more happily simply by recognizing that the right to be wrong, in the other fellow's opinion, is the essence of all civil liberty; and that those who cannot live happily in an exceedingly diverse society, in which the right to be different has long been recognized as one of the essential principles, have small chance of happiness in America. People who can tolerate neighbors who differ markedly with them as to what is to be praised or condemned in regard to books, plays, food and drink, and recreation are the only ones who have a chance to live happily in the reasonably free, but far from perfect, society of the United States.

In short, the situation which Mr. Rice is condemning seems to be only that the people with whom he does not agree are taking Mr. Rice's medicine and thriving on it. They are using their constitutional rights to promote the kind of society they like for themselves and their children. They may even use "pressure," which I gather is, in Mr. Rice's argument, persuasion, exhortation, propaganda on the part of his opponent. This seems to be the burden of his discontent.

The Miracle Case

Probably the most famous censorship case—genuine censorship—ever to take place in the United States is the case of the movie, *The Miracle*. This film was originally licensed for showing in New York State by its Board of Regents. Shortly after this film opened, the License Commissioner of New York City notified the theatre where the picture was showing that unless the picture was removed from the screen its license would be revoked. The

courts quickly put a stop to this movement, ruling that neither the License Commissioner nor any other city official has the right to stop the showing of a film that has been licensed by the State Board of Regents.

Next, the Regents, after announcing that they had received "hundreds of protests" against *The Miracle,* reviewed the film and agreed unanimously (Catholic, Protestant and Jewish members uniting) that the picture was sacrilegious and revoked its license for showing in New York State. It must be held in mind that the Board of Regents was acting under a state law which required them to ban any movie that was "sacrilegious."

When hundreds of members of any free society write to any body of public servants protesting that the public servants had not properly discharged their responsibility to the citizens under the law, this seems to be only the functioning of a democracy. Obviously, anyone is free to hold that the protesters were silly, and that the board receiving the protests should have disregarded them. Whether the protesters were stimulated to the action they took by looking up sacrilege in the dictionary, by reading Cardinal Spellman's critical statement, or newspaper stories and editorials, or from having seen the movie, probably no one can ever know. Clearly, however, it is no one else's business what made the protesters protest. The responsibility for the action of the Regents rests solely upon the Regents, where it was placed by the laws of the State of New York.

Since the law required the Regents to ban sacrilegious films, it seems clear that this could mean nothing other than that they must ban films which they thought were sacrilegious. It seems perfectly clear that the censorship laws of the State of New York can only mean that the board must ban any movie which the board decided was sacrilegious or obscene, indecent, etc. They are the official censors representing the people of the State of New York. It is obviously impossible that they could properly and legally act upon anyone's decision except their own. Certainly, it would be a strange board of censors who would tell the public: "We, the official censors of the State of New York, upon

whom the whole responsibility is placed by the law of the state, believe unanimously that this movie is sacrilegious, but we do not prohibit its showing because some people do not agree with us!"

It has been widely claimed that *The Miracle* was banned by court action instituted by the Roman Catholic hierarchy. This claim is evidently false. In the oral argument in *The Miracle* case before the Supreme Court, Mr. London, the attorney for Joseph Burstyn, the plaintiff, told Mr. Justice Reed, in answer to the question of how the issue got before the Board of Regents, that the board acted on its own responsibility, that nobody filed a motion. The only action taken was instituted by the Board of Regents for the State of New York on their own responsibility under the laws of the state.

On cancellation of the license by the State of New York, Mr. Burstyn started the court action against the Board of Regents. The Regents won the case in all the New York courts. In the New York Court of Appeals, the court gave a definition of sacrilege as a legal basis for prohibiting the showing of a moving picture: "No religion, as that word is ordinarily understood by the ordinary reasonable person, shall be treated with contempt, mockery, scorn, or ridicule." In other words, the moving picture which holds religion, any religion, not just the religion of the censors, up to contempt or mockery or scorn or ridicule is sacrilegious, and must be refused a license to show in New York State.

The Supreme Court Opinion

The case was appealed to the Supreme Court of the United States. In its decision the Supreme Court did not decide that the movie was not sacrilegious. The opinion of the nine Justices as to whether or not the movie was sacrilegious would have been irrelevant anyway, because under the New York law a movie which the official censors of New York State decide is sacrilegious must be banned. It was not the movie, but the law, which the Court passed upon.

However, it is the habit of many people in discussing any-

thing which they consider a violation of freedom of the press or speech, to appeal to the First Amendment when, to be entirely accurate, such appeals should be phrased in terms of the Fourteenth Amendment. But the Bill of Rights and the language of the First Amendment are more widely known and more ardently revered than is the language of the Fourteenth Amendment. More certain emotional impact seems to be gained by appealing to the First Amendment than to the Fourteenth, in spite of the fact that, when these matters reach the Supreme Court, they are settled in terms of the Fourteenth Amendment—that is, of course, if the Justices on a particular occasion are enforcing the Constitution of the United States rather than their personal preferences or, as Justice Jackson said in the McCollum case, their "prepossessions."

There have crept into the Supreme Court opinions in recent years, however, such casual, almost random, phrases as "since the First Amendment has been incorporated in the Fourteenth" or "absorbed by the Fourteenth." The Court has in this way given certain justification to the popular, but essentially erroneous, substitution of the First Amendment for the Fourteenth in all such discussions.

In considering Supreme Court action on any censorship cases coming up from state courts, we should remember that all such cases are necessarily Fourteenth Amendment cases, not First Amendment cases. Not only is it clear from the history and language of the Fourteenth Amendment that that Amendment did not "absorb" the First or "incorporate" it or "transfer" it to the states as a restriction on state authority over the domestic concerns of the people, but the Supreme Court, as already shown, emphatically rejected Justice Black's argument in 1947 that the Fourteenth Amendment had this effect on the Bill of Rights. And no Justice of the Supreme Court has ever even attempted to show how the Fourteenth Amendment could have absorbed or transferred the First Amendment without doing the same thing to the rest of the Bill of Rights.

From the language of the Court's opinion, Mr. Justice Clark speaking for the Court, it seems clear that the Supreme Court overruled the Court of Appeals of New York on what might be termed a major and a minor reason. The major reason is that the "censor's conclusion" is not a valid basis. Justice Clark said: "Since the term sacrilegious is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one before us. *We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is sacrilegious.*" (Italics supplied.)

Since the administration of any censorship law can depend upon nothing other than the conclusion of one person or a group of persons (censor, judge, or jury), it seems inevitable that if this holding of the Supreme Court becomes the law of the land, then there cannot be in the United States any censorship of any kind, banning any movie, play, magazine or book. Anyone who wishes to study the definitions of obscenity, pornography, immorality, or profanity in the dictionary, in the criminal codes, or in court opinions, must come to the opinion that sacrilege is at least as easy to test *objectively* as any of these other terms—which is not at all. None of them can be given an *objective* test.

Regardless of the variety of arguments presented before the Supreme Court, the Court based its decision on the answer to one question: "As we view the case we need consider only appellant's contention that the New York statute is an unconstitutional abridgment of free speech and of free press." In coming to the reasons for the decision, Justice Clark, for the Court, said: "In seeking to apply the broad and all-inclusive definition of 'sacrilegious' given by the New York Courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. New York cannot vest

such unlimited restraining control over motion pictures in a censor. Under such a standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion or another, and he would be subject to the inevitable tendency to ban the expression of unpopular sentiments sacred to a religious minority. However, from the standpoint of freedom of speech and the press, it is enough to find out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon an expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publication, speeches, or moving pictures."

The Supreme Court's opinion as detailed by Justice Clark seems much closer to fortune-telling or clairvoyance than to a consideration of constitutions, laws, or judicial decisions. The statement that the board of censors of New York State, in trying to decide whether or not a given film holds up religion (any religion) to scorn, ridicule, or mockery, is *necessarily* "set adrift upon a boundless sea, amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies," is simply a melange of figurative language that is inappropriate, indefinite, shows lack of understanding of the situation, and reflects unfavorably and gratuitously on the Board of Regents.

Like the remark about "powerful orthodoxies," the further statements that "the most careful and tolerant censor would find it virtually impossible to avoid favoring "one religion" over another, and would be subject to an "inevitable" tendency to ban the expression of a popular sentiment sacred to a religious minority," are startling expressions to find in a Supreme Court decision. They are clearly not part of a discussion of the constitutionality of a state statute. They seem rather to be the result of some occult process by which the Justices of the Supreme Court look into the future and decide that Regents of the State

of New York must necessarily be dull men, lacking in personal integrity, unaware of the purpose of the law which it is their responsibility to enforce in the name of the people of the state. It constitutes simply a determination that the Regents of the State of New York, current and future, must necessarily be lacking in the degree of intelligence and character which our whole legal system regularly assumes to be true of all judges and juries.

The decision that the State of New York cannot give to such a group the responsibility for deciding that a given movie is sacrilegious (or obscene) on the basis of "a censor's conclusion," if made a rule of law for all censorship cases, would necessarily end all censorship in the United States of America. Maybe that is what the Court should have said. If so, it seems obvious that a frank statement should have been made that the Constitution bans censorship in areas where there can be no objective tests, but only the subjective conclusions of one man of a small group of men. Then those who want censorship in this field could start a campaign to amend the Constitution. However, the Court said in *The Miracle* case that this decision does not rule out censorship of motion pictures "under a clearly drawn statute designed and applied to prevent the showing of obscene films." The Court should not try to have it both ways. Also, whether a statute is or is not "clearly drawn" must also always be a matter of purely subjective opinion.

The Difficulty of Defining Sacrilege

The minor reason given for the decision of the Supreme Court has to do with the difficulty of defining "sacrilege." The Court repudiated the definition of the Court of Appeals of New York State, but the Justices did not say what they held to be the proper definition of the word. The sum of the court's opinion in regard to the definition seems to show that the reasoning at this point was not that the statute was not "clearly drawn," but

that the New York Regents and courts were unable to define "sacrilege"—or to define it in a way to make an objective test possible. The idea that a Board of Regents, or judges, or men and women on juries, would be unable to understand the words "religion, mockery, scorn, contempt, or ridicule" is rather hard to accept.

Mr. Ephraim S. London, in his brief for the appellant in *The Miracle* case, wrote: "Judge Desmond, in his concurring opinion in the court below, noted that the courts have not found the word 'obscene' too general for application; and concluded that the word 'sacrilegious' ought not to present any difficulties. The learned judge failed to consider that *the word 'obscene' has been judicially interpreted while the word 'sacrilegious' has not been.* The meaning of 'obscene' has been defined and limited by judicial opinion. . . . No such definition or authority was available to those seeking to learn the meaning of 'sacrilegious' in the statute under consideration." (Italics supplied.)

This is a startling theory of law and language. Under it, no court can pass on the meaning of a word or phrase until after some other court has passed on it; no court can ever do it for the first time! That would end all enforcement of probably thousands of new statutes. It would put an end to laws and law suits, and make the laws and decisions of the past the only ones available for all the future. Further, on the almost universal testimony of scholars (and of judges when they are speaking as scholars and not as propagandists) the proper meaning of the language in a law is the meaning intended by the legislators who made the law. The idea that "judicial opinion" is the only arbiter in regard to the meaning of language is nonsense in linguistics and revolution in government.

The Miracle decision dealt only with the word "sacrilege." It was not a case of blasphemy or obscenity. It seems entirely possible in view of the definitions of "blasphemy" given by Mr. Justice Frankfurter in his opinion, that if *The Miracle* had been banned on the basis that it was blasphemous the Supreme Court might have affirmed the decision. They would have had no diffi-

culty in finding a definition. Of course, the Justices could not have found a definition that would have provided them with an objective test of blasphemy. Any decision as to whether or not a given book is blasphemous can be made *only* in terms of private opinion, subjective conclusion. If that were the issue in *The Miracle* case, and the Justices felt and wrote as they did in the case before them, they would have been compelled to ban *The Miracle* simply on the grounds that a movie could not be banned on the subjective conclusion of a censor. That amounts to saying that all censorship in the United States is unconstitutional.

A Question of Religion

A number of commentators on *The Miracle* case—and, in fact, Mr. London, the attorney who argued for Mr. Burstyn, the appellant before the Supreme Court—seemed to think that it is unconstitutional for courts or other agencies of government in our country to pass upon the question of whether a book or play or movie is sacrilegious, because that is passing upon a question of *religion,* and *that* is a violation of the First and Fourteenth Amendments. This seems a very grave misconception.

Mr. London, in his brief, wrote on this point: *"The censor, in applying the statute, must determine a belief to be a religious one . . . It is impossible to enforce the law without making a religious judgment* and without adopting some specific religious dogma as a criterion . . . Any state law requiring a government official to pass on substantive matters of religion is a law respecting the establishment of a religion and contravenes the First and Fourteenth Amendments . . . Clearly the statute under consideration, if intended as the Appellees say, to prevent offenses against religion, was a law to 'aid all religions' and, therefore, directly within the ban of the First Amendment. The fact that the section purports to protect all faiths against sacrilege does not vindicate it." (Italics supplied.)

This theory, effectively enforced, would prevent the American people from dealing in any way through legal procedures with

any question concerning any doctrine that anyone claimed to be a religious tenet: polygamy, "mercy" killing, infanticide, handling poisonous snakes in church services, or the doctrine of a new cult (which would doubtless grow rapidly) that paying income taxes by its members was prohibited by their religion, and, in another category, all released-time cases, religious-freedom cases, and all cases concerning "an establishment of religion."

Certainly, many courts, and other administrative agencies, have frequently passed upon the question of what is religion. The Supreme Court has accepted this obligation in numerous cases, from the famous Polygamy case in 1879 through the "released time" cases, and the Jehovah's Witnesses cases in recent years. In the Polygamy case, Mr. Justice Field speaking for the Court said: "The term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His being and character, and of obedience to His will."

The First Amendment says that Congress shall make no laws that are either for or against "an establishment of religion." The Fourteenth Amendment says that no state (not only Congress now, but no state) shall deprive any person of "liberty without due process of law." The word "liberty" as used here has been defined by the Supreme Court again and again as covering only those great "fundamental personal freedoms that are implicit in a scheme of ordered liberty."

If anyone will show how a subjective decision that a certain movie holds religion (any religion) up to scorn, mockery, contempt, or ridicule gives a preferential status to one religious group not available to others, or that the freedom to exhibit publicly for profit a movie that holds religion up to scorn, etc., is a fundamental personal freedom that is implicit in a scheme of ordered liberty, then and only then can we have a rational case that it violates the Constitution for any government agency to make a decision that requires its members to decide on what is, or what is not, religion. If such a case can be established it

will, of course, invalidate scores of Supreme Court decisions from 1879 to 1954.

However, in spite of substantially all relevant American history, especially the relevant history of the Supreme Court, both the attorneys and some of the Justices seem haunted by a fear that it is unconstitutional for a Court, or any other government agency, to think or speak about religion. In short, we find (only in the last decade, however) men in high positions and places of great power who seem to think that any influence of religious belief on, or even thinking about, religion in any connection with public service of any kind is a violation of the Constitution. The men who take this position all seem to be strong for freedom of religion. To them, apparently, Americans are free to have what religion they choose, so long as they do not take it seriously. Any creed is allowable, so long as the true believer does not allow his creed to affect his actions as a public servant. But in the Jehovah Witnesses cases and the "released time" cases the Justices of the Supreme Court seemed to have been wholly free from this sort of fear.

Dissatisfaction with the Decision

There has been a great deal of dissatisfaction as to the effect of *The Miracle* decision. Those who object to any censorship of moving pictures regret that the Supreme Court did not say that local prior censorship could not be applied anywhere, under any circumstances, to moving picture film. The Court said: "To hold that liberty of expression by means of motion pictures is guaranteed by the First and Fourteenth Amendments, however, is not the end of our problem. It does not follow that the Constitution requires absolute freedom to exhibit every motion picture of every kind at all times and all places." The Court said further "that freedom of expression is the rule. There is no justification in this case for making an exception to that rule . . . protection even as to previous restraint is not absolutely unlimited.

But the limitation has been recognized only in exceptional cases." The decision has had very little effect, if any at all, in stopping local prior censorship of moving picture film. It is still going on in New York State, and we have recently had "a censor's conclusion" of the New York State censors that *The Moon Is Blue* does not violate the State law.

The Supreme Court decided only that under the New York law (1) New York State (not any other state) could not (2) ban a movie on the basis of sacrilege (not on any other basis), because (a) there is difficulty in defining sacrilege, and because (b) New York could not have a law of the sort which depends on the subjective conclusion of a censor. The court decided nothing else.

The Case of Pinky

The case of the movie *Pinky,* coming up from Texas, was decided on June 2, 1952. The appellant in this case was convicted under an ordinance of the City of Marshall, Texas, for exhibiting a picture after being denied a license by the local board of censors. Action was affirmed by the Court of Criminal Appeals of Texas. The relevant ordinance authorized the local board of censors to deny a license for the showing of a motion picture which, in the opinion of the board, is of such a character as to be "prejudicial to the best interests of the people of the said city," and makes the showing of a picture without a license a misdemeanor. The Chief Justice announced the decision: that the judgment was reversed. Justice Frankfurter filed a concurring opinion in which he said: "this ordinance offends the Due Process Clause of the Fourteenth Amendment on the score of indefiniteness." And he referred to his concurring opinion in *The Miracle* case.

Justice Douglas also filed a concurring opinion in the *Pinky* case, in which he went much further than Justice Frankfurter. Justice Douglas said: "The evil of prior restraint is present here in flagrant form. If a board of censors can tell the American

people what it is in their best interest to see or to read or to hear, then *thought* is regimented, authority substituted for liberty, and the great purpose of the First Amendment to keep uncontrolled the freedom of expression defeated."

Clearly, every decision of a censor or a board of censors, or of a court, either in exercising prior restraint or punishment after the fact, is in effect "telling the American people what it is to their best interest" not to be allowed "to see or to read, or to hear." Of course, in other cases that we have been considering, the "best interests of the people" is spelled out in terms of obscenity or pornography or sacrilege. The wide and unspecified scope of "the best interests of the people" alone saves this language of Justice Douglas from being a flat objection to the existence of censorship laws of any kind, either as prior restraint or punishment after the fact.

Obviously, Justice Douglas went too far in saying that the "great purpose of the First Amendment was to keep uncontrolled the freedom of expression." The great (and only) purpose of the First Amendment has been recognized by scholars and the Supreme Court throughout our history as simply to state explicitly that the United States Congress could not interfere with the basic freedoms. Since such controls, wherever we have any, are commonly exercised by states, and since the First Amendment had no application whatever to the states, the problem of control of freedom of speech and the press was in no way affected by the First Amendment. Also, it should be borne in mind that these freedoms are not, and never have been, absolute, either in the jurisdiction of the federal government or in that of several states. The United States government exercises censorship "after the fact" against obscenity. Some half-dozen states and many cities are still exercising censorship as "prior restraint" in the field of motion pictures.

The Case of M

The film *M* was banned in Ohio under a state statute which

provides that "only such films as are in the judgment and discretion of the Department of Education of a moral, educational, or amusing and harmless character shall be passed and approved." In the oral arguments before the Supreme Court, as reported in *Law Week,* January 12, 1954, the basic contention of the Attorney General of Ohio was that the picture tended to "incite to crime." The picture is "the story of a city in which a psychopathic character is at large, prematurely dismissed from a mental hospital. In order to protect little girls from what he considers to be the evil world of men, he kills them . . . No actual murders of children are shown and . . . there is no 'sex angle' involved." The Supreme Court reversed the Ohio courts.

The attorney for the motion company argued that, regardless of the character of a film, no film could be censored in advance of showing, and relied on *The Miracle* and *Pinky* decisions among others. He contended that a state has no power of censorship as "prior restraint." Justice Jackson asked about the hypothetical case of an operator "who selects a location near a high school and shows a picture explaining how to induce an abortion." The attorney said even this could not be prohibited in advance, but that the operator could be arrested after the showing. Justice Jackson pointed out that the operator could post a bond and show the picture again the next day; and the attorney "told him that on a repeated exhibition of the picture after arrest an injunction would lie."

Here, as in *The Miracle* case, the Justices seemed to be in search of an objective test of matters which can never, anywhere, under any circumstances, be *tested* other than by the subjective opinions of some person or persons—as boards of censors or judges. Justice Jackson "inquired about the standards to be applied" and asked, "What is the test? What showing puts it over the line?"

The Chief Justice said: "Suppose there are two pictures portraying murder. One is permitted to be shown, while the other is banned. What measuring rod do you have that will determine which one will not be allowed." The Attorney General

replied that "the statute, as interpreted by the Supreme Court of Ohio, barred the obscene, the immoral, and that which tends to promote crime or riot." Then the Chief Justice asked about obscenity: "What measuring stick do you have for the Board?"

The Attorney General: "In the law, we have no other measuring stick."

The Chief Justice: "It is the personal view of the people on the Board?"

The Attorney General: "That is right. And I submit to you it is the sense and experience of men. That is the definite standard."

Justice Jackson: "The whole purpose of standards is to reduce the area of arbitrary judgment."

The Attorney General: "Our court has laid down the standard."

Justice Jackson: "They say it is bad, I don't know why."

Justice Burton: "The censors used the word 'harmful.' What is harmful?"

The Attorney General: "The effect of the picture could lead to the commission of crime."

It seems clear, if the constant use by literate people and the work of the lexicographers are to be accepted as dependable guides, that "the personal views of the people on the Board," or on a jury or on a Supreme Court bench, are the only possible measuring sticks "of what is or is not in a particular case, obscene, immoral, sacrilegious, or likely to incite to crime." If society cannot use the personal views, the conclusions, the subjective opinions of people on boards of censors, in jury boxes, or on court benches, it follows that we cannot have any administration of censorship laws either as "prior restraint" or as punishment "after the fact."

The Case of La Ronde

The film *La Ronde* was banned in New York State by the Board of Regents as "immoral" and "tending to corrupt morals";

the New York courts upheld the ban, and the case was appealed to the Supreme Court, which reversed the decision.

The attorney for the picture distributor described it as "a delightful picture which dealt with the futility of transient amorous relationships," argued that "any censorship of motion pictures was unconstitutional," and asserted that "No one can tell what is 'immoral' and what would 'tend to corrupt morals.' . . . The rule is limited to what the Director of Education happened to think about a picture at a given time."

Again, in this case, there was a discussion of the lack of "standards" to test what is "immoral." Counsel for the New York Regents "indicated that he would be surprised if there is anyone in the United States who doesn't know what immoral is." Justice Frankfurter remarked: "You mean if there is anyone who cannot tell what is immoral to him."

The Douglas-Black Opinion

The Supreme Court, without a published opinion, reversed the judgments of the Supreme Court of Ohio and the Court of Appeals of New York, thus freeing both pictures from the prohibitions of these states. Justice Douglas, with Justice Black agreeing, filed a concurring opinion, in which he said: "The argument of Ohio and New York that the government may establish censorship over motion pictures is one I cannot accept. . . . The spoken word is as freely protected against prior restraints as that which is written . . . The same result in the case of motion pictures necessarily follows as a consequence of our holding in [*The Miracle* case] that motion pictures are 'within the free speech and free press guaranty of the First and Fourteenth Amendments.' Motion pictures are of course a different medium of expression than the public speech, the radio, the stage, the novel, or the magazine. But the First Amendment draws no distinction between the various methods of communicating ideas . . . The First and Fourteenth Amendments say that Congress and the states shall make no law which abridges freedom of

speech or of the press. In order to sanction a system of censorship I would have to say that 'no law' does not mean what it says, that 'no law' is qualified to mean 'some' laws. I cannot take that step . . . In this nation every writer, actor, or producer, no matter what medium of expression he may use, should be freed from the censor."

Of course, the First Amendment makes no distinction among "the various methods of communicating ideas." It does not mention this broad subject. It speaks only of freedom of press and speech. Justice Douglas finds it impossible to read "no law" to mean other than exactly what it says, but he finds it easy to make freedom of speech and press to mean any method of communicating ideas. He is impressed by the potency of *The Miracle* decision, but not by the constant application of "no law" to mean "some laws" by the Supreme Court, the Congress, and the Presidency for over one hundred and sixty years.

He wants no censorship in the United States. He has a perfect right under the law and Constitution to want this. He may freely recommend constitutional amendments and statutory changes to Congress and the state legislatures. But he has no authority whatever, even with the unanimous concurrence of his brother Justices, to bring about any such revolutionary usurpation of the power over what Jefferson called the "domestic concerns of the people" by simple Supreme Court edict.

The Complex Damage of These Cases

The damage of the Supreme Court's total activity in the cases of *The Miracle, M,* and *La Ronde* is not only the effect of the decisions freeing these three films. The encouragement to the promotion of immorality, sacrilege, indecency, or incitement to crime which the court has given to the motion picture theaters of Ohio and New York is only part of the harm done. The damage to civil liberties, to the functioning of constitutional democracy, and self-government in the several states is great and far-reaching. This arises largely from the language of the Justices

in the period of the oral argument of the cases and in their written opinions.

This language, when added to that expressed in opinions in the Everson, McCollum, and Zorach cases, if ever accepted and observed in action by the American people, would destroy the precise purpose of the First Amendment's religious clause. And if we accept as valid constitutional doctrine the reasons and explanations given in these opinions, we will be giving up the "text" which Jefferson wanted in the Constitution to express the constitutional arrangement between the states and the federal government and which was designed to preserve the freedom of the people of the states from any outside authority to tell them what is good for them. We shall be substituting the personal preferences of the majority of the nine men on the supreme bench (shifting from case to case in various social situations) for the constitutional situation expressed in the First Amendment. This constitutional arrangement was deliberately adopted in 1787, spelled out in the First Amendment in 1789, ratified by the American people in 1791, and has been honored by all Congresses, all Presidents, and all Supreme Court decisions from 1787 to 1948.

The only hints which the Supreme Court Justices have ever given as to when and how the people of the states surrendered their freedom are references to the statement in the Fourteenth Amendment: "nor shall any state deprive any person of . . . liberty . . . without due process of law." For decades the Court has held to the position that this means only the "liberty" that is "implicit in a scheme or ordered liberty." No Justice in any of the film cases just discussed has been sufficiently reckless to try to show how the "liberty" to exhibit movies of the sort they were considering is "implicit in a scheme of ordered liberty." Until they can do this or else show that the Court's long-established position on the Fourteenth Amendment is, and always has been, wrong, it will be impossible for them to make a rational defense of these decisions.

As was to be expected, and should be noted by all commen-

tators, the dissatisfaction with the Court's handling of these cases of movie censorship is expressed by others than Catholics, as, for example, in the *Christian Century* for February 3, 1954.

The Campaign against All Censorship

Various Americans wish to continue to work to eliminate the last vestiges of censorship. That is clearly their privilege in our society, and no one should attempt to prevent them from arguing as emphatically as they wish for the total abolition of censorship. Of course, it would be helpful if the argument could be carried on fairly and accurately, as a discussion of censorship for what it is, without any attempt to spread the term over criticism and editorial work and free discussion which the spreader happens not to like. We should have as little censorship as the American people want, and if any group can persuade the various states that no censorship is desirable, then those who would like some censorship should accept the situation with equanimity. On the other hand, if the proponents of no censorship fail to convince the states that now have censorship laws that they should give them up, then these advocates should, as good citizens in a free society, remain calm and good-natured, and should refrain from uncomplimentary remarks in regard to those who do not agree with them. After all, seven states have movie censorship, and about fifty cities have it. Most people seem to find life good in all states and cities. Probably if all, or none, had movie censorship boards operating, most Americans would never know the difference.

The Legion of Decency

Mr. Blanshard, in *American Freedom and Catholic Power,* says of the Legion of Decency: "The Legion's name implies that it is the guardian of purity and the logical heir to Anthony Comstock in the pursuit of the lewd, the lascivious and the obscene. It pleases the Catholic hierarchy to have Americans

take this view of the agency, because if it were called the Catholic Political and Doctrinal Censorship it would immediately lose its usefulness to the Church . . . Actually the Legion of Decency, in its private censorship of about 450 films a year, is far more concerned with Catholic dogma and Catholic social philosophy than with decency." Both of these statements are absurdly false, as anyone can discover by examining the bulletins of the Legion of Decency in the Catholic press. Mr. Blanshard offers no proof; he merely makes the announcement.

In discussing the effect of the activities of the Legion of Decency on the censorship situation, we should keep in mind not only that the activity of the Legion of Decency is never censorship but only criticism, and that the Legion can never punish anyone who ignores its opinions. Also, we should remember that taking the pledge of the Legion of Decency adds nothing to the moral obligations of the individual Catholic.

The pledge of the Legion of Decency reads:

"I condemn indecent and immoral motion pictures and those which glorify crime or criminals.

"I promise to do all that I can to strengthen public opinion against the production of indecent and immoral films, and to unite with all who protest against them.

"I acknowledge my obligation to form a right conscience about pictures that are dangerous to my moral life. As a member of the Legion of Decency I pledge myself to remain away from them. I promise, further, to stay away altogether from places of amusement which show them as a matter of policy."

As stated frequently in Catholic publications, *there is nothing new in the pledge of the Legion of Decency.* "The pledge imposes no new obligation, but merely makes explicit that which every Catholic is obliged in conscience to do, namely, to avoid the occasion of sin, 'to do good and avoid evil.' " The essence of it is that each person who takes the pledge promises to stay away from moving pictures that are dangerous to his or her moral life, and to stay away from places of amusement which show such films "as a matter of policy." Since it is true that all well-informed

Catholics, and probably most other people who have a specific moral code of any kind, are already under moral obligation to stay away from what is frequently referred to as the "occasions of sin" or situations which would endanger their moral life, there is clearly nothing new in the pledge of the Legion of Decency to add to the obligations of anyone. Of course, no one takes the pledge of the Legion of Decency, or any other pledge, unless he wants to. Since there is no new obligation of any kind in the pledge, it is probably true that very few Catholics in the United States ever refrain from taking the pledge when the opportunity is offered once a year in the various churches.

Neighborhood Protests

The activity of neighborhood and parish committees in attempting to lessen the flood of objectionable books, books that they consider dangerous to the moral life of the community, and particularly to adolescents, are frequently referred to as "consumer censorship" or "unofficial censorship" or "neighborhood censorship." Sometimes the committees who are active in this area are referred to as "self-appointed censors," and challenged to take their case into court, and decide the difference between them and those who differ with them by the action of judge and jury. However, it seems probable that in most places there is no law being violated by the newsstands and drugstores selling the cheap literature of the kind that is so widely objected to. Surely there is no law being violated by the parents of the neighborhood who try to counteract the effect of this kind of merchandise being sold to the adolescents of the neighborhood. Further, it would be impossible to make laws to prohibit these activities by committees of parents without destroying the basic idea of the cultural pluralism which underlies our society, and making what has frequently been called the American *right* to be different into the *crime* of differing with your neighbors and expressing the difference.

The activities complained of as "consumer censorship" vio-

late no one's freedom to express the opposite. In fact, both sides of this controversy function simply as the members of a free society who happen to have the courage of their convictions. Further, it seems thoroughly unhelpful to refer to the activity of such groups as "pressure groups" whenever we disagree with their objectives. What distinguishes legitimate, admirable, democratic activity from "pressure" seems to depend simply upon whether one likes it or not. On "my" side it is courageous campaigning for the public good; on "your" side it is pressure that threatens American freedom.

Since it seems clearly impossible in this country to provide through laws and courts any means of stopping neighborhood groups from working against the sale of the kind of cheap books, or other kinds of merchandise, which they think are dangerous to the moral life of the community, it seems wholly undesirable to continue denouncing such activities as "censorship" and the "attempt to destroy" freedom of the press, and of speech.

Any citizen has a right, of course, to object to the programs of these organizations, to express his disapproval in public, and to try to convert the public to oppose by lawful methods the objectives of these organizations. Such a course would be relying upon the educational process and the functioning of democratic procedure. Obviously, while we remain a free society there is nothing that can be accomplished any other way. To embitter and confuse the public by crying "censorship," to cover the various activities that one happens to dislike would, if widely accepted, make the word "censorship" lose all meaning. It would become simply a derogatory word like un-American, or anti-democratic. If we are going to impede the growth of genuine censorship in this country, and hold the unpleasant effects of censorship to the absolute minimum that we can get the members of our democracy to accept in times of peace, and to the essentials of national defense in time of war, we must so use the term that it will still carry meaning more specific than simply that of indicating activity which irritates us.

There seems clearly an overemphasis in the discussions of neighborhood protests against the distribution of lascivious literature on the participation of Catholics in that activity. Whether or not it is recognized by all of its users, it seems a common technique of propagandists just now to ride on the wave of suspicion of one's Catholic neighbors so industriously stirred up by appeals to the gullible and the uninformed.

Catholics have no monopoly in these neighborhood protests. They come as well from non-Catholic persons and organizations. Among the witnesses reported by the Religious News Service from Washington, dated June 23, 1953, testifying before the House Post Office Committee in the interests of the bill in the area we are now discussing, sponsored by Representative Edward H. Reeves, of Kansas, the following paragraph occurred: "Protestant witnesses at the Committee hearing included Dr. Joseph M. Dawson, Executive Director of the Baptist Joint Committee on Public Affairs, Methodist Bishop Wilbur E. Hammacher, Executive Vice President of the Methodist Board of Temperance, and Miss Elizabeth A. Smart of the Women's Christian Temperance Union; Martin H. Work, Executive Secretary of the National Council of Catholic Men appeared for the Council and the Catholic-sponsored National Organization for Decent Literature. All of these people were reported as testifying in the interests of the Bill sponsored by Mr. Reeves."

The New York *Times* of May 15, 1953, carried a story datelined Atlantic City in which it reported that the New Jersey State Federation of Women's Clubs urged that the legislature enact laws to control the sale in the state of filthy literature which, it said, was flooding the nations' newsstands. The action was taken and a resolution approved by the 1,200 delegates, representing 41,000 members of 297 clubs at the Federation's 59th annual convention. While the resolution did not spell out any remedies, the delegates emphasized that censorship is not the

answer to stopping the flow. "The morals of our youth are being undermined because of the ease with which salacious, paper-bound books and misnamed comics are secured by them," and the resolution added that such books are "crowding out more desirable literature."

As a typical example of the double attempt to misrepresent this campaign, and to put the responsibility for it solely upon Catholic citizens, in highly inaccurate language, take the remarks of Reverend Dr. Carl Harmon Boss, preaching in the Flatbush Unitarian Church in Brooklyn, as reported in the *Herald Tribune* of March 2, 1953. According to this report, Dr. Boss "compared the efforts of a Roman Catholic Church group in the Flatbush area to halt the sale of books it considers objectionable to the *thought control* and the *brain washing of the Nazis and Communists* . . . The issue is the Constitutional question of the *separation of church and state,* but there are laws to cope with problems of obscenity and pornography, and that a church was not the *arbiter of a community's reading* habits. Extra-legal action as utilized by our *Flatbush vigilantes* is a flagrant *violation of due process of law* and is, therefore, neither appropriate nor desirable. Such pressure from voluntary organizations is *alien to the American tradition.*" (Italics supplied.) Note the inappropriateness of all the italicized phrases.

On April 1, 1953, the *Christian Century* ran an editorial in which, after mentioning Parent-Teacher Associations, "and the like," it remarked, in regard to the campaign against the publishers of quarter books, which were held to be objectionable, "that's a legitimate form of community action." The editor said further that the publishers of the quarter books had brought much of the trouble on themselves, and that the clean-up campaign in some places "was said to be no more than the effort of neighborhood groups to put pressure on drug stores and magazine shops to watch their own shelves." However, one week later, the *Christian Century* returned to the subject, mentioning this time only publications which do not conform to the code of the National Organization for Decent Literature—"a Roman Catho-

lic organization which is the counterpart in this field of the Legion of Decency in movie censorship."

The National Organization for Decent Literature consists of Protestants as well as Catholics, but is primarily an organization of Catholics.

In the editorial of April 8, which mentioned only Catholics, the judicial air of the previous week was lacking. Instead we have a treatment of what the week before was called "a legitimate form of community action" in terms of "vigilante censorship, cultural Ku Kluxism, acting by threats, self-appointed Vigilantes, and terroristic censorship that operates outside the law." However, this editorial, in spite of all this wild and bitter language, says that the letter to the vendor of books which occasioned this second editorial, quotes the city ordinance concerning obscene printed matter. So it seems that these neighborhood groups of "self-appointed Vigilantes, exercising cultural Ku Kluxism and terroristic censorship" (if the vocabulary runs that way some weeks) were actually warning the neighborhood vendor that he was violating a city ordinance and that he ought to stop it. The concluding sentence of this editorial is a masterpiece of confusion. It reads: "It may be assumed that some of the books to which these cultural storm troopers [*sic*] object are morally corrupt, but the harm they could do if permitted to circulate freely is not one tenth as great as that wrought by the blight which is spread over American democracy by these methods of intimidation [*sic*]."

If any of the books in this controversy was morally corrupt, and violated the city ordinance, what is wrong in attempting to have the city ordinance enforced? Is it improper to enforce a law which has the support of Catholic citizens? Are not the ordinances of an American city an aspect of American democracy?

The activity of the "Vigilantes" which Dr. Boss was talking about is the activity of the decent literature committee of the Church of Our Lady Help of Christians, in Brooklyn. The procedure of this committee, as reported again and again, is that of

going to the proprietor of a drugstore, for instance, and asking him to stop selling the kind of books that they thought were a menace to the children and youth of the neighborhood. In a letter published in the New York *Times* of May 8, 1953, Mr. Frederick Massry wrote: "Since when is it a violation of freedom of the press, or freedom of speech, to protect our youngsters against harm, and to seek the voluntary cooperation of our community news dealers and other citizens to help us to accomplish our only objective, namely to protect the morality and well-being of our youth either by individual or group action?"

Referring to the extremely uncomplimentary language which had been used in characterizing the works of this committee, Mr. Walter Loethfelner, chairman of the group, had this to say: "Are these the proper terms to describe our meeting with our neighborhood dealer in a friendly neighborly way and asking him, for instance, (not telling him) to please help us curb this type of filth for the sake of our children? Co-operation is entirely voluntary and they too feel a sense of responsibility toward our young people who are the customers."

Obviously, so long as the American freedoms apply to the Flatbush section of Brooklyn, the drugstore proprietor will be perfectly free to disregard the requests of the neighborhood committee, and go on selling the books that the committee objected to. And obviously, also, the neighborhood committee and their friends will be perfectly free to stop trading at the drugstore. These are simply aspects of the necessary conditions in any free society. While it seems difficult to understand why anyone who knows the meaning of life in a free country can protest violently against this sort of activity itself, anyone in the neighborhood can freely abstain from joining in the movement or can freely promote a counter-movement to encourage the druggist to continue selling the listed books.

The Parent Teachers Association of Public School 193 in Brooklyn is reported to have "established a committee to end the voluntary [*sic*] removal of objectionable literature from the shelves of neighborhood stores and to oppose the decent litera-

ture committee of Our Lady's Help of Christians Church." What the procedure is to be was not reported.

There is nothing approaching an invasion of American freedom, nothing even unusual for Americans to attempt in a particular neighborhood, to stop or to minimize the sale of any merchandise which they consider to be harmful and easily accessible in stores frequented by school children. Such attempts on the part of Americans to impede or control the distribution of morally harmful items of commerce is thoroughly in the American tradition. Regulating the sale of alcoholic beverages, to the point in many communities, and in some states, of complete prohibition are well known. Similar regulations in regard to the sale of marijuana cigarettes, impure food and drugs, the betting on horse races, Sunday baseball, bingo games, etc., are commonplace in America.

Alternatives to Neighborhood Agreements

This brings us to the question of what the opponents of neighborhood arrangements want done in regard to books that parents of a neighborhood think are harmful. Probably they do not want the various states to have official censors, who will read manuscripts and tell the publishers what books they may publish and what they may not publish. The common recommendation is that we "rigidly enforce" the laws we have on obscenity, to punish the publisher *after the fact,* if and when he publishes obscene books and magazines.

There are a number of objections to this as the only restraint. One is that legal action is expensive and time-consuming. So much time may be taken before the cases are finally settled in the Supreme Court that the remedy is not satisfactory to people who want their children better protected from the menace of salacious books as they want them protected from marijuana cigarettes.

It does no good to say that there is a difference between salacious books and marijuana cigarettes, holding that the latter is

much more damaging. Anyone has the right to feel that way, of course, but if some parents feel that the salacious books are a menace to their children, that is their business and not that of their neighbors. On the other hand, any parents who want their children to have easy access to salacious books which cannot be bought in the neighborhood can at very little extra time and trouble get supplies in from the publishers and give them to their children without making a public display of them in sight of all the children of the neighborhood. Or if the parents want these books easily available in the neighborhood, they can start a counter-campaign. There is nothing to prevent them from going to the neighborhood druggist and persuading him not to stop the sale of the books, and telling him if he drops the books they will take their trade to some other store. Many serious commentators have expressed the opinion that this whole matter is much better handled on the community level by mutual agreement than it can ever be handled in the law courts, through attempts to fine or imprison, after the fact.

Better Judgment and Taste in Publishing

A frequent suggestion for a remedy, that seems the only possible one to head off continued action by neighborhood committees, if not severe censorship laws, is perhaps that of the *Christian Century's* editorial of April 1, of Father Fitzgerald, the head of the National Organization of Decent Literature, and of others. Their suggestion is that publishers exercise better judgment and better taste, and perhaps do a bit of strong-minded editing to make their books, particularly pocket books, less offensive, both as to text and cover, to many members of the market.

It seems highly improbable that the publisher and the retailer of the kind of books that have been objected to by various groups can ignore indefinitely this public movement, and continue unrestrained to flood the drugstores and newsstands with books which so many parents consider a thoroughly bad influence on children and adolescents.

It is easy to say "control your own children and let other people do as they wish in regard to their children." But this is no answer at all. It is not simply a question of what Mr. and Mrs. Jones want the Jones children to read. They may be deeply concerned about sending their children to schools which are so located in regard to various drugstores and newsstands that it is probable that a great many other children in the school will be reading salacious books, even if the Jones children do not. It seems clear that, in so far as these books are a menace to adolescents, the menace is a public one, and that the Jones children may, in ways easily imagined, be hurt by the fact that their companions have as a daily fare the kind of reading matter which the Jones parents consider a threat to *all children.*

Americans are not accustomed to follow the theory of "look out for your own family and let other people look out for theirs," in regard to alcohol, marijuana, and food and drugs. Why should it be necessary to follow it in regard to salacious literature?

Under the compulsory school attendance laws, children and adolescents must go to school. Frequently, in a neighborhood there is only one school which all children must attend, or else go away to school at considerable expense. We are so accustomed to severe restraint on the sale of alcoholic beverages and marijuana cigarettes that probably no responsible person would advocate allowing the sale of either to be carried on under such conditions that grade and high-school pupils could buy them freely. The position that many parents would doubtless prefer to have their young offspring reading salacious books rather than drinking whiskey or smoking marijuana is not a sufficient answer.

What is wrong with objecting to all three? Certainly, the menace of smoking marijuana or drinking alcohol by the pupils of a high school is a menace to others as well as to those who do the drinking and smoking. Also, the menace of salacious reading is not confined to the readers. The victims of sex crimes and even less horrible experiences also suffer.

The Movement is Spreading

This campaign for decent books is growing rapidly. The present widespread nature of this movement may be indicated by the names of the localities that are mentioned in a single brief item in *Publisher's Weekly* for March 21, 1953. The following localities are all involved in this activity. Bethlehem, Pa.; Cincinnati, Ohio; Poughkeepsie, N. Y.; Bolton, Maine; Manchester, N. H.; Great Forks, N. D.; Youngstown, Ohio; Cleveland, Ohio; and the States of Georgia and Massachusetts. In Georgia their first censorship law has been adopted and a Literature Commission appointed to operate against salacious literature and indecent art on books and magazine covers.

This growing activity against the distribution of salacious literature is entirely legitimate under our laws and constitutions in almost all of its forms, and certainly cannot be stopped by name-calling. Instead of being "censorship," this whole activity is a widespread example of the functioning of a free society, acting, in a traditional American manner, under American law, and the American theory of freedom of speech. The constant misuse of language in the objections to this campaign is of no service to any interest that prefers a rational solution of this controversy. Doubtless, the only right solution would be to have the publishers exercise better judgment and better taste, and to exhibit a decent respect for the opinions of mankind by stopping the worst of these exhibitions, in text, illustration, and cover, before laws controlling the situation are put upon the statute books of the various states.

7.

Minor Irritants and Incipient Controversies

IN THIS CHAPTER the discussion is limited to six striking examples of the sort of constant barrage of misrepresentation to which American Catholics are subjected in the United States at the present time. Hundreds of examples could be given if space permitted.

In spite of the position taken by such writers as Paul Blanshard and Professor James Hasting Nichols, to the effect that the Catholic hierarchy have the entire publishing world so terrorized that it is practically impossible to publish any criticism of the Catholic Church or American Catholics in this country, a stream of books flows from the presses falsely attacking Catholicism and American Catholics. Such publishing seems to be in no way impeded by the terror of the Catholic hierarchy.

Moreover, any reader of the daily press who is interested in news touching upon religion or religious groups must realize that news stories, letters to the editors, and editorials appear frequently in the newspapers and periodicals of America which contain thoroughly uncomplimentary remarks and innuendoes concerning the Catholic Church and its American members. But many readers do not recognize that such items are usually based on misinformation, or express simply the abiding prejudices of certain people concerning the Church and their own Catholic neighbors. Furthermore, the uninformed reader, and probably most people who would be informed but have not had sufficient revealing experience, would not know how difficult it is for Catholics to get such misstatements corrected in many American publications.

A striking example of the spreading of gross misinformation, and the refusal to make any correction, is given by a treatment in *Time* magazine of the remarks of Cardinal Ottaviani concerning the attitude of certain governments toward religious minorities. Since *Time's* treatment of this incident includes about all of the errors available to a journal, it will serve well for the entire discussion under this head. However, in spite of the many, gross, and varied mistakes in *Time's* comment, I am convinced that it is a fairly typical example of the kind of common misrepresentation, and also the common refusal to make correction, that confront American Catholics today. *Time's* item on Cardinal Ottaviani is unique only in the completeness of its use of available major errors.

On March 2, 1953, Cardinal Ottaviani gave a lecture at the Pontifical University of St. John Lateran in Rome. Parts of this lecture, though apparently not the whole text, were later published by the university. A special dispatch to the New York *Times* dated Madrid, July 9, discussed this situation at some length as viewed by someone in Madrid. Among other things, the dispatch said: "On the subject of Protestant propaganda in Catholic countries Cardinal Ottaviani clearly sided with the Spanish and Italian authorities who have attempted in past years to restrict it within their national territories." The dispatch further remarked that "Cardinal Ottaviani echoed the views of the Spanish Episcopacy" and "deplored the views of what he called 'liberal Catholicism' as expressed by some United States circles inasmuch as in his opinion they represented a departure from the true Catholic theological path."

Following the publication of a number of protests and objections to Cardinal Ottaviani's position, and the rumor that some prelates in the United States were said to have sent protests to Rome against the cardinal's statement, the New York *Times* asked the Vatican for a clarification of the cardinal's remarks. On July 23, 1953, the *Times* published a long story on this affair

which opened as follows: "The Vatican said today [July 20] that an address by Alfredo Cardinal Ottaviani here, March 2, supporting the Spanish bishops' position favoring restriction of Protestant minorities in Roman Catholic countries in the face of criticism of some French and United States Catholics, was not official nor semi-official but was nevertheless unexceptionable."

One of the most inaccurate and misleading of the public discussions of this situation appeared in *Time,* August 3, 1953. First, the magazine's headline, "Catholics and Tolerance," was misleading, since it covered a highly distorted discussion of Catholic positions on tolerance and one which was badly confused by not making a distinction between doctrinal or *theological* tolerance and *civil* tolerance. In other words, *Time* made no distinction between representing the truth of Christ's teaching as the Church understands it and observing (or denying) equality before the law of a given nation of citizens of different religious beliefs.

In the second place, *Time* garbled the statement of the Vatican spokesman by not quoting the easily understood words "not official nor semi-official," but using only "unexceptionable," which could be easily misunderstood by the semi-literate. And in a concluding paragraph *Time* attributed to the American theologian, Rev. John Courtney Murray, S.J., of Woodstock College, Maryland, the statement that the cardinal's position was neither an "official nor semi-official" utterance. Instead of telling its readers that the Vatican's statement said that, *Time* reported this as the remark of an American theologian.

"Unexceptionable" means something to which one cannot take exception or object. This applied to the statement that was neither "official nor semi-official" means obviously that the cardinal's statement was personal, but one that a Catholic might hold. There is certainly nothing new in that. There are doubtless a great many Catholics in Spain and Italy, and probably in other countries, who believe that a Protestant minority should be severely restricted in a Catholic country; just as there are necessarily a great many Protestants in Sweden, and probably in other countries, who believe that a Catholic minority should

be severely restricted in a Protestant country. Any well-informed person in regard to the religious situation in the world knows this to be true.

In the third place, *Time* referred to "the old Catholic custom of alliance between Church and State." If *Time* was informed, and willing to be fair or scholarly in its discussion of religious matters, this should have been referred to as "the old human custom." It certainly has been an old Protestant custom in Europe for many centuries.

On August 1, 1953, the day on which I received my copy of the magazine dated August 3, I sent *Time* a letter correcting the most glaring instances of inaccuracy in its discussion. *Time* declined to print the correction. However, on August 24, *Time* published four small letters from four thoroughly uninformed people who had swallowed whole *Time's mistakes.* And in a letter to me, dated September 11, one of *Time's* editors said: "You may judge from these published letters that most of our readers were profoundly shocked and disturbed over what they felt was an exceedingly undemocratic and un-Christian viewpoint." The readers were of course, reacting only to *Time's* thoroughly inaccurate reporting of the incident.

The first letter said that the cardinal's statement was "in agreement, with the history, doctrines and practices of the Roman Catholic Church." This is, of course, simply untrue, as anyone who knows the religious history of the Western world is perfectly well aware. This letter said further that "this harsh principle of Roman Catholicism . . . is put into an oppressive execution where their majority is great enough." This statement is false. This is *not* a principle of Catholicism; and it is *not* put into execution in various overwhelmingly Catholic areas, like Ireland and Belgium and the Province of Quebec.

A second letter equating the restrictions of Protestants in Spain and Italy with the torture and execution of Catholic priests by Chinese Communists is something that a reputable journal should not spread around the world without correcting comment.

A third letter characterized the cardinal's remark as a state-

ment of "Roman Catholic policy throughout the world." This is pure nonsense to anyone who is informed in the field of religion "throughout the world." A statement of world-wide Catholic "policy" (if there is any such thing) is hardly labeled by a Vatican spokesman as neither official nor semi-official. I doubt if there is any world-wide Catholic policy in the field of government; there are, of course, world-wide Catholic doctrines in the field of faith and morals. However, government policies and theological and philosophical doctrines are things that well-informed editors and writers should be able to distinguish.

A further indication of the lack of elementary information in regard to the field of religion among the editors of *Time,* even though they discuss the subject week after week, was given in their letter to me of September 11, in which they mention that the new Concordat was giving "freedom of private worship to Spanish Protestants," and remarked that this indicates that "Spanish Protestants are due rudimentary privileges at least."

The editors of *Time,* if they are going to discuss religion in various countries of the world, ought to know that Spanish Protestants have had their own churches with freedom of worship and freedom of preaching in their pulpits for years. An Evangelical Seminary for the training of ministers is conducted openly, and certainly the advent of rudimentary privileges to Spanish Protestants did not come as a result of the recent Concordat. Spanish Protestants, like Swedish Catholics, have had rudimentary privileges for many years, though both are under rather severe restrictions. But let me repeat, so far as I know, neither American Catholics nor American Protestants wish to introduce into America the conditions in either Spain or Sweden.

From the New York *Times'* reporting of the original dispatch from Spain, and from their reporting of the clarification by the Vatican spokesman, it seems perfectly clear that Cardinal Ottaviani did not render any decision of the Church in favor of the situation in Spain as contrasted to the situation in America. So far as any evidence that I have been able to discover indicates, American Catholics believe in the position as probably best expressed in the official statement of the American bishops in

1948, in which they again endorse the total American constitutional arrangements for the relations of government and religion "as no special privilege to any group, and no interference with the religious liberty of any citizen."

There are perhaps a few Catholics in the United States who do not agree with the bishops on this matter of political arrangement. I know of none. Clearly, at least some, though not all, of the Spanish hierarchy will disagree with this position of the American bishops. It seems obvious that the position of Cardinal Ottaviani, and the Spanish bishops who agree with him, is unexceptionable and also that the position of the American hierarchy and Spanish bishops who agree with them is also unexceptionable. In other words, under the doctrine of the Church in regard to the relation of the temporal to the spiritual, either of these positions may be (and are) held by orthodox Catholics. This seems clearly to be the position of Pope Pius XII, as reported in the *Tablet,* on December 19, 1953, based on a dispatch from Vatican City.

The Pope was speaking to a convention of Italian Catholic jurists and spoke particularly of religious liberty in the growing community of nations. "The first principle laid down by the Pope concerned objective truth and the obligation of individual consciences toward what is objectively true and good. In this, he said, there can be no compromise. The second principle concerned the practical tolerance of a variety of religious beliefs and practices." The following are quotations from the Pope's address:

"From what we have said, it is easy to deduce the fundamental theoretical principle for dealing with these difficulties and tendencies; within the limits of the possible and lawful, to promote everything that facilitates union and makes it more effective; to remove everything that disturbs it; to tolerate at times that which it is impossible to correct, but which on the other hand must not be permitted to make shipwreck of the community, from which a higher good is hoped for.

"The difficulty rests in the application of this principle . . .

within its own territory and for its own citizens each state will regulate religious and moral affairs by its own laws; nevertheless, throughout the whole territory of the international community of states, the citizens of every member-state will be allowed the exercise of their own beliefs and ethical and religious practices, in so far as these do not contravene the penal laws of the state in which they are residing.

"Above all it must be clearly stated that no human authority, no state, no community of states, whatever be their religious character, can give a positive command or positive authorization to teach or to do that which would be contrary to religious truth or moral good. Such a command or such an authorization would have no obligatory power and would remain without effect.

"Another question essentially different is this: Could the norm be established in a community of states, at least in certain circumstances, that the free exercise of a belief and of a religious or moral practice, which possess validity in one of the member states, be not hindered by laws or coercive measures of the state throughout the entire territory of the community of nations.

"In other words, the question is raised whether in these circumstances *non impedire* or toleration is permissible, and whether consequently positive repression is not always a duty.

"The duty of repressing moral and religious error cannot therefore be an ultimate norm of action. It must be subordinate to higher and more general norms, which in some circumstances permit, and even perhaps seem to indicate as the better policy, toleration of error in order to promote a greater good."

This discussion is concerned with policies in regard to political government, not in regard to theology. The Church does not have any single universal, rigid policy in political affairs. The Church does not teach political science, it teaches faith and morals.

It is regrettable that the editors responsible for the large section of *Time* which deals with religion each week are not sufficiently familiar with elementary Catholic doctrine, and the religious laws in various countries. Had they been, they would

have avoided the extreme misrepresentation which *Time* distributed to millions of readers in the issues of August 3 and 24. Also regrettable are the lapses in editorial discretion in publishing the little nonsense notes from four uninformed letter writers, complimenting *Time* for titillating the writers' prejudices, while failing to publish a correction when clear mistakes are called to their attention.

Catholicism and Communism

The second general topic in this chapter is the strange attempt of certain people to spread about, among the gullible and the uninformed, the idea that there is a strong affinity, similarity, almost identification, between Catholicism and Communism. That there should be found today mature men, who can read and write, who believe, or pretend to believe, that Communism and Catholicism are very much alike is a disturbing revelation of the lengths to which religious prejudices can drive some men.

In 1951, Mr. Paul Blanshard published a volume called *Communism, Democracy and Catholic Power*. Mr. Blanshard's position in this book, that Communism is a threat to human freedom, presents, of course, nothing new. All Americans except the few Communists and their fellow travelers, realize this, and have realized it for a long time. The second position in the book, that Communism and Catholicism are alike and that Catholicism is also a great enemy of human freedom, is very much like his position in his earlier *American Freedom and Catholic Power*. In both books this idea is elaborated in a hodge-podge of misstatements, unsupported assertions, inaccurate interpretations, and innuendos. In the second book, Mr. Blanshard writes: "Man-made gods like Stalin and the Pope are the result of totalitarian power, the final flowering is a process of cultivated adulation. The question which puzzles many students of Kremlin and Vatican policy is: How does a dictatorship go about persuading free men to accept this sort of thing in the first place?

How are the minds of men prepared so that they surrender themselves to a deified Leader?"

In trying to spread his idea that the Catholic Church and Soviet Communism are very much alike as threats to what he calls human freedom, Mr. Blanshard overlooks the fact that Soviet Communism has at its disposal to enforce its command on those who disagree with its position, army, navy, air force, secret police, concentration camps, firing squads, prisons, and human slavery. All of these are a part of the machinery of Communism in its war against human freedom. Mr. Blanshard knows, although he does not mention it, that the Catholic Church has nothing of the kind. He must know that the Church is a teacher, not a dictator. He must know that the Catholic Church has no force with which to prevent him or me, or anyone else, from doing what we please or to punish us for what we do. The Church has only the force of its persuasion, its instruction, and the privilege of its sacraments. If anyone wishes to receive the sacraments of the Catholic Church (or a degree from Harvard University), he has to meet the requirements of the Church (or of Harvard). Neither the Church nor the university can force anyone to accept its teaching, its privileges, or its degrees.

Mr. Blanshard also overlooks the fact that materialism and atheism are basic concepts of Communism—basic concepts which give sanction to the Communist program of inhuman brutality and mass murder; and the contrary fact that Catholicism is diametrically opposed to materialism and atheism; and the resulting facts that Catholics are the largest group on earth of active and determined opponents of Communism, and the first targets of Communism when Communist forces take over neighboring areas which they can subjugate.

In his *Democracy and the Churches,* Professor Nichols also attempts to demonstrate that Catholicism and atheistic Communism are essentially alike.

(1) "The Roman Court is a government over all Catholics." He writes that "in practice the Roman Court has the right to demand obedience of any Catholic on any political issue."

(2) He speaks of "the ignorance of American Catholic laity and of Al Smith as to their duties to oppose the American constitutional system."

(3) In another passage Professor Nichols spoke of Pope Leo XIII as "serving notice that it was the program of the Roman Church to win a political and social authority for the Roman hierarchy in the United States which is incompatible with the Constitution as it stood, and with the liberties for which America was a symbol."

Even a slight investigation would necessarily have revealed to him that no official or agency of the Church is a government over any Catholics—except in the little country of Vatican City; and that no official or agency of the Church can demand any obedience, of any Catholic, on any political issue—with the possible exception of the relation of some of the higher clergy to the Pope. The same minimum investigation would have shown him that his insulting reference to the American Catholic laity is totally false; American Catholics have supported the American constitutional system as nearly unanimously as any other group of Americans.

(4) In commenting upon a remark of Pope Leo XIII concerning "unbridled license of speech and of writing," Professor Nichols says, "Leo means that no Catholic can consider ideal any state that does not by law enforce the thought police of the Inquisition and Index." Professor Nichols, of course, must know that "unbridled license of speech and of writing" has never been permitted by any civilized government, including that of the United States and of each individual state.

Probably his most absurd and insulting slander is: (5) "the chief political device that is unique to the Roman Church is, of course, the confessional." It seems to me totally incredible that a man in Professor Nichols' position could have believed this statement, or the next one: (6) "in a Catholic country confession . . . destroys the independence of electors, of representative, of functionaries, and of the sovereign."

(7) Also, "in a Catholic population there is no such thing as a secret ballot."

(8) And, "The American hierarchy, which has probably less independence as against Italian officialdom than any other major episcopate of the Roman Catholic world, put all its considerable resources of propaganda and intrigue, to manipulate the diplomatic agencies of the American people contrary to all their tradition and natural sympathies."

(9) "The fact that Roman Catholics are bound in certain official positions, such as judges, police officials, diplomatic agents, to serve the Roman Curia, even contrary to the instructions of the community whose officers they are, was believed only with reluctance."

(10) "Evidence as to the operations of the Roman agents in Government service is not generally accessible."

I have listed here ten absurd, false, and insulting statements, or innuendoes, published by Professor Nichols about his Catholic fellow citizens. He offered no proof of any kind for the truth of any of them. He could not possibly have had any proof. These slanders, however, help Dr. Nichols to bolster up his monstrous conclusion: "In the midst of the present Roman Catholic crusade against Communism the fact that, politically speaking, this is a family row, should not be obscured . . . Natural affinity may yet one day unite these two most deadly enemies of man's freedom."

Rev. John S. Cronin, Assistant Director of the Social Action Department of the National Catholic Welfare Congress, in an article released to the Catholic press on November 19, 1953, gave a detailed answer to the charge so frequently made that Communism has flourished in Catholic countries but not in Protestant regions, as has been stressed by so many anti-Catholic lecturers. Father Cronin lists some of the information easily available to anyone who is interested in the truth about the spread of Communism in the different sections of the world. "If there is a Communist party in Ireland, it has been strangely

silent. There is no present problem of Communism in Spain. Belgium has few Communists. Western Germany and the Netherlands, with half their populations Catholic, have Communist parties of insignificant size. French Canada is not troubled with Communism. The incidence of Communism in Latin America is quite uneven." Further, Father Cronin refers to the spread of Communism in China, Indo China, and India, and observes what any commentator or public lecturer ought to know, that the Catholic Church was not a factor in these regions of Asia.

Concerning the growth of Communism in France, Italy and parts of Latin America, Father Cronin refers to the well-known fact that there are millions of persons in these countries who are not practicing Catholics. They are not in any important way affected by the Church. "In these varied countries, political leaders who are practicing Catholics have been in the forefront of the world struggle against Communism. The world owes a great debt to DeGaspari of Italy, Bidault of France, and Adenauer of Germany. The Christian democratic parties of Europe have spearheaded the courageous resistance against the red menace. These parties are largely Catholic in membership . . . One final point might be pressed, while the Communist parties in predominantly Protestant countries have not been large in number, they have often exerted extraordinary influence. Espionage, for example, has done grave damage in the United States and the United Kingdom. None of the espionage agents in these countries have sprung from Catholic backgrounds. In the United States, such names as Gold and Hiss, and in the United Kingdom such persons as McLane, Burgess, and Fuchs are not products of an alleged Catholic clericalism. At times even more damage is done by the hundreds of Communists in organizations which confuse and mislead the public. The full story of the influence achieved by such groups would shock the nation. Yet in such organizations one does not find the names of the Catholic clergy or laity, sponsors, promoters or dupes of the Communists."

In October, 1951, I participated with Rev. Dr. Pruden of Washington, D. C., in a television program concerning President Truman's nomination of a diplomatic representative to Vatican City.

Before discussing the attitude of American Catholics to the problem of diplomatic representatives in Vatican City, I want to mention one item in this discussion which ties up with the matters just discussed. In answer to the question Dr. Pruden remarked that the Communist ideology had been accepted in various Catholic countries, but not in Protestant countries. Communist ideology, so far as the evidence of responsible investigators and commentators indicates, has never been accepted by any country, even including Russia. The Communist party that rules the Russian tyranny has, I believe, been estimated as never constituting more than seven per cent of the Russian people. Russia and the satellite countries that have been overrun have not accepted Communist ideology. They have, without exception, been taken over by the armies, secret police, gunmen, spies, and executioners of Soviet despotism. No country, either Catholic or Protestant, that had a chance to choose has ever accepted Communist ideology.

The charge is frequently made that President Roosevelt, in sending Mr. Myron Taylor as a personal envoy to the Pope, and President Truman's nomination of General Mark Clark as Ambassador to Vatican City, were both the results of "pressure from the Catholic hierarchy of America." No individual who has ever made this charge has ever (so far as I have been able to find out, and I have tried to find out) submitted a scrap of evidence to substantiate the charge. The charge is false, and totally unsupported. The charge that the American State Department and the President of the United States can be controlled by the pressure of the Catholic hierarchy of America, or the pressure of the Protestant ministers of America, or the Jewish rabbis of America, or any other single religious group in America,

is something good Americans or honest men should not make, without any evidence at all, and good citizens should not believe. The principle of "innocent until proved guilty" should be available in defense even of the President of the United States, the State Department and the Catholic bishops. On the other side, of course, we have the testimony of President Roosevelt and Secretary Hull of the State Department, but this does not stop the writers who are interested in putting the American Catholic hierarchy in the worst possible light before the public, regardless of evidence or the truth.

In the program on television which Dr. Pruden and I participated in, neither of us had any opportunity to present a statement, or to make any comment at all, except as questions were addressed to either one of us by name. Therefore, I had no opportunity to comment on Dr. Pruden's absurd statement about Catholic countries accepting Communist ideology, and none to make a statement about my personal position in regard to diplomatic relations with Vatican City. That position was, and is, that I had never studied the subject particularly, was not deeply interested in it, and was perfectly willing to leave it where the Constitution of the United States places it, on the President of the United States and his subordinates in the State Department.

However, after reading a great deal of rather shrill protest against President Truman's recommendation, my position is that almost all of the arguments against it are either flatly untrue or silly. I do not believe that a representative to Vatican City is of any special value to American Catholics. But I have never seen a statement from a diplomat or historian who was not in favor of such representation. People who really know the whole situation seem to be emphatically in favor of a diplomatic representative in Vatican City for the good of the United States of America as a whole—the country, not any particular group.

I believe that any plan which is opposed only by such arguments as have been brought against the plan to send a diplomatic representative to Vatican City must be a plan of considerable merit. That such a group of Protestants as Sumner Welles,

Cordell Hull, Franklin D. Roosevelt, Dean Acheson, and Harry Truman should seek to carry out a plan of the sort that Roosevelt and Truman made, in the interests of the Catholic Church, or under pressure from the Catholic hierarchy, rather than because they thought it to be to the advantage of the United States, strikes me as too insulting to the men mentioned, and too ridiculous, for any responsible American citizen to make.

Mr. Arthur Bliss Lane, who has spent many years in the diplomatic service of the United States of America, told me once that for the last twenty years he had been trying to get the United States to send a diplomatic representative to Vatican City. He said, as many other people have said, that the diplomatic corps at Vatican City is probably the most important diplomatic corps in the world. Every major nation on earth is represented there except Soviet Russia and the United States. The people who urge this take the position that the United States should have a representative in that body, not because of what the representative would say to the Pope, or the Pope would say to the representative, but that America's representation should be present in this great group of diplomats from all the countries of the world, both to listen and to talk.

The two principle arguments against a diplomatic representative of the United States to the country of Vatican City which appeared in the press are these: first, that it would violate the "constitutional separation of church and state in the United States"; second, that, after all, Vatican City is not a real country, and not entitled to such representation from the United States.

The only type of separation of church and state which we have in the United States is the provision both in the federal government and in the individual states, that there should be no establishment of a religion in this country. The sending of a diplomatic representative to Vatican City does not establish any church or any religious group in the United States.

The fact that the Pope is head of the government of the independent country called Vatican City should not make diplomatic representation to the country impossible, any more than

the fact that Queen Elizabeth II is head of the Anglican Church makes representation to her court impossible, or the position of the Emperor of Japan, not only as head of the church, but as the god worshiped by the Japanese people, made it impossible for us to have diplomatic representation there. When a Baptist President of the predominantly Protestant United States sends an Episcopalian envoy to Vatican City, (the head of the state in Vatican City being the Pope), if that action constitutes "an establishment of religion," which religious group—the Baptist, the Episcopalian, Protestantism, or Catholicism—is established? When we are asked to believe that such an arrangement constitutes "an establishment" of the Catholic Church in the United States, this needs considerable explaining and defending to make it sound sensible. However, it seems obviously impossible to substantiate this position with anything more realistic or convincing than simply the reiterated assertion that it is a violation of the constitutional separation of Church and State.

The second argument against sending a diplomatic representative to Vatican City is the denial that Vatican City is a sovereign state. That Vatican City is a sovereign state is simply a statement of fact. But, according to the *Christian Century,* "the claim that Vatican City is a nation, is casuistry." This position does not agree with the position of scholarly authorities in regard to what constitutes an independent nation. According to Professor Lauterpacht of Cambridge University, widely recognized as probably the leading authority in the English speaking world on this particular subject, the nations of the world have four qualifications for statehood. These are, that an independent state or country, in order to be recognized as such by other independent countries, has to meet four tests: It has to be politically independent of every other, and have a population, a territory, and an effective government. These are the only four tests of statehood required for diplomatic recognition known to international law and diplomacy. As this authority remarks, Vatican City obviously meets all four of these tests. Then he goes on to a

special discussion of Vatican City, since Vatican City is the smallest country in the world.

Professor Lauterpacht reports that there is one other basis which is conclusive in regard to the independent status of the country of Vatican City, even regardless of the way in which it meets the four special tests of statehood, and that is that Vatican City is recognized as an independent country by practically every country in the world. He remarks that that makes it "an independent country." But, *Christian Century* insists further that "Vatican City is a piece of political subterfuge, *now resorted to by the Church* to get around the intent of the U. S. Constitution, and the separation principle of the American Government." (Italics supplied.) The position that the Church or the Catholic hierarchy of America attempted to bring about the appointment of the representative to Vatican City is unsupported by any evidence whatever, either in the *Christian Century* or in any other arguments on this situation that I have been able to find.

Anne O'Hare McCormack, writing from Rome in her column in the New York *Times* for December 24, 1951, reports as follows:

"The proposal to appoint an American Ambassador to the Holy See causes much less excitement at the Vatican than in the United States. Announcement that President Truman will proceed with his intention of submitting the name of General Mark Clark to the new post when the Senate reconvenes next month evokes no comment in Vatican City. Outside the narrow limits of the Papal domain, astir with the preparations for the joyous pageantry of Christmas, some Romans question the choice of an active general as an envoy to the Holy See, but church officials have nothing to say on this or any other aspect of the matter. The Vatican was not advised in advance, or consulted on the appointment, and its attitude is that it is strictly the business of the United States."

"In Vatican circles the idea prevails that the chief advantage of the mission would fall on the American side . . . Our embassy

to the Italian Government is not a channel of communication with the Vatican." [This position, of course, has been taken by a large number of informed commentators.]

"In any event, the day of the personal representative is past. The abrupt manner in which the Taylor mission was ended, without previous notification to the Vatican, shocked a Pontiff who is himself a diplomat, and of the old school that sets great store on good manners. Since then he has made it plain that if Washington finds it useful to send an envoy to the Vatican, he must come as a representative of the government, with the confirmation of the Senate."

Obviously, the Pope's chief significance in the world is that as the head of the world-wide Catholic Church, not as the administrative head of the smallest country in the world, Vatican City. It is, of course, difficult to keep a clear distinction between the Pope as Pope, and the Pope as head of Vatican City. Admittedly, the positions of the Pope and Vatican City are unique. However, the fact that there is no other religious leader whose position is substantially parallel to that of the position of the Pope, and the fact that Vatican City happens to be the smallest country in the world, should not either singly or in conjunction justify the almost total unreality of the principal arguments against having the United States represented in the diplomatic corps at Vatican City.

The "Catholic Vote"

A fourth example of a minor irritant or incipient controversy presented to American Catholic citizens is the frequency of remarks concerning the imaginary "Catholic vote."

In recent years, tables have been prepared and published, which show the liberal or progressive, as against the conservative or anti-progressive, votes of Catholics in Congress as compared with the similar vote of the entire membership of Congress. This is an absolutely unquestionable record of the actual conduct, in

regard to their responsibilities in American government, of a large group of Catholic laymen.

As reported in the *American Catholic Sociological Review* for December, 1946, there were eleven Senators and seventy-seven Representatives in the Seventy-ninth Congress who are, or claimed to be, Catholic. The voting record on a list of bills labeled "progressive" or "anti-progressive" on the basis of the attitude toward the bills of the *New Republic* or the CIO *News* is given in the article just mentioned.

On the ten measures selected, the House of Representatives in the Seventy-ninth Congress cast 1,540 progressive votes as against 2,050 anti-progressive votes, for a liberal average of about forty-three per cent of the total votes cast. But the seventy-seven Catholic members cast 582 progressive votes against 122 non-progressive votes for almost eighty-three per cent registered on the liberal side.

The record in the Senate shows that from the point of view of the progressives, Senators Chavez, McMahon, Mead, Murray, Myers, and Wagner made excellent records. Senators Ellender, O'Mahoney, and Walsh voted only about half the time for the liberal side of these issues, while Senators Cargill and McCarran, both of Nevada, rarely voted on the progressive side of a bill. In the Seventy-ninth Congress the Senate voted "liberal" thirty-three per cent of the time; the Catholic Senators voted "liberal" seventy-one per cent of the time.

A similar report on the voting of Catholics in the Eightieth Congress was published by Dale Francis of Notre Dame University in the *Commonweal* of January 14, 1949. Again the table of the Catholic votes in the Senate demonstrates that the Senators in this group varied from almost totally conservative (Senator McCarthy of Wisconsin having voted on the liberal side just once out of the fifteen bills considered) to totally progressive (Senator Wagner of New York having voted on the progressive side all fifteen times). Senator McGrath of Rhode Island voted conservative just once, and Senator Myers of Pennsylvania

voted conservative twice. On the other hand, Senator Ellender voted progressive only five times; Senator O'Connor of Maryland voted progressive only six times—each out of fifteen. In sum, the Catholic Senators were predominantly on the progressive or liberal side.

In the House of Representatives, of the Eightieth Congress, the distribution was again from almost totally conservative to almost totally progressive, with the overwhelming number of votes on the progressive side. In the House, in fact, there were a number of Catholic Representatives who voted progressive one hundred per cent of the time on the fourteen bills listed in this table, and, there were some who missed being totally anti-progressive or conservative by just one vote.

Joseph L. Hansknecht, Jr., in a 1951 Master's thesis at The Catholic University of America, did something rather unusual. He studied the records of a group of fifty Catholic members of the House of Representatives and compared them with fifty non-Catholic members who had what he called "comparable backgrounds." He was endeavoring to find out to what extent the Catholic members voted as Catholics, in a way that was easily demonstrated to be different from the way in which a comparable group of non-Catholic members voted. The two groups were held to be comparable in length of service in Congress, education, occupations, marital status, military service, Congressional District control (by a dominant political party or shifting from one party to another), the concentration of population, and regional distribution. These two groups of fifty each—one Catholic and one non-Catholic—held to be comparable on a tabulation of the above-mentioned matters, were then studied and tabulated as to their votes on twenty roll calls dealing with labor legislation, public housing and rent control, social security, minimum wages, civil rights, anti-trust and excess profits taxes, veterans' pensions, farm programs, military aid to foreign nations, economic development of foreign nations and expert controls.

These studies demonstrate, according to the official records: (1) That there was no "Catholic vote" in the sense that Catho-

lics follow a "line" of any kind or vote at the direction of any person or group. (2) That the Catholics in the House of Representatives do not vote as Catholics, but vote primarily as Republicans or Democrats, just as do the other members of the House and Senate, and that over eighty per cent of the votes of the Catholics were on the "liberal" side. (3) That in both the House and Senate in two Congresses, and in the House in a third Congress, the Catholic votes are distributed over the whole field from ultra-progressive to ultra-conservative. The results of these three studies are given in detail in *Catholicism and American Freedom.*

The evidence of five such tables, from three different recent Congresses of the United States, should demonstrate beyond question what the actual situation is in the voting of American Catholic laity in official positions in American government. These studies demonstrate further that the Catholics in the United States Congress in recent years are overwhelmingly more on the liberal or progressive side than the non-Catholic members of these Congresses. That statement, it seems to me, is beyond any possible question.

There is other evidence to the same effect. For instance, Mr. James Loeb, Jr., National Executive Secretary of Americans for Democratic Action, wrote in the *Commonweal* of June 16, 1950: "If all Catholics of the United States abstained from a presidential or congressional election, the result would undoubtedly be a swing further to the right than we have known in this country for generations. Similarly, if all congressional Catholics went on strike for a full such session, the result would make the 80th Congress seem, by comparison, a high mark of liberalism."

Slander in Sermons

A fifth example of the minor irritants and controversies which confront Catholics these days when they pick up the daily newspaper is what can be called "slander in sermons." I am using slander in its exact and literal sense as explained in the dictionary.

Each instance of slander of Catholics given in the daily press in reporting the sermons of the country would perhaps be a minor irritant. Taken as a whole, in the vast mass of such material appearing in the newspapers of the country, it constitutes probably a major item for controversy, if Catholics had time to engage in these controversies, and if the newspapers were willing to print the corrections and the answers, which is, from my experience, not to be expected.

An excellent example of the handling of this particular menace is that of the Catholic Layman's Association of the State of Georgia. In 1916, the Catholic population of Georgia was less than one per cent of the whole. At that time Tom Watson was having an easy time in such a population, where probably many of the citizens had never even seen a Catholic church or perhaps even a Catholic—certainly a population in which most people were not well acquainted with any Catholics. In such a situation Mr. Watson was making easy work of gaining influence, votes, and pompous authority by an elaborate campaign of attacking Catholics, the Catholic Church, and the threat of the Pope coming over to rule America. It is not surprising to find, in such an atmosphere, that the newspapers frequently carried items of misinformation and innuendoes against Georgia Catholics and the Catholic Church.

A group of Catholics organized in 1916 the Catholic Layman's Association. This association gave itself the task of sending a brief, factual, calm, and courteous letter to each newspaper editor—one letter to answer each attack or misrepresentation of Catholics or Catholicism in the newspapers of the State. When this activity began, it was necessary for the Catholics to get together an amount of money by which they could engage the services of a clipping bureau and of an executive secretary or director whose business it was to answer every instance of misrepresentation of Catholicism in the state press.

This machinery covered 175 newspapers every week, some of them every day. At the beginning of this activity, it was necessary for the Layman's Association at times to answer as many as

100 misrepresentations a week. This has been going on through the years, from 1916 to 1954, and currently, I was told in Georgia recently, the number of such letters now occasioned by the misrepresentation appearing in the press of Georgia has dropped from as many as 100 a week to two a month. I think this is doubtless the most remarkable instance in history of Catholic laymen being able to correct misrepresentation and to spread accurate information. It would be helpful to all America, not only to American Catholics, if every community, every state in the nation, could be served by such a league.

A good sample (but only a sample) of the slander in sermons may be seen in the reports printed on page 22 of the New York *Times* of Monday, November 2, 1953, of talks made the day before by two of the leading Protestant clergymen of the city, Rev. Dr. Robert J. McCracken in the Riverside Church, and Rev. Dr. Harold C. DeWint in the West Park Presbyterian Church of Amsterdam Avenue.

According to the *Times,* Dr. McCracken said: "the Pope is today the last absolute monarch in the world. The hierarchy rules the church. It makes pronouncements on all manner of social questions having to do with law, medicine, education and labor, pronouncements which are virtually decrees." Further, Dr. McCracken asserted, according to the *Times,* "that the Roman Catholic Church's hatred of Communism is a tragic irony" and that "in many ways, it is no less autocratic and totalitarian."

Dr. McCracken, as a clergyman of prominence who presumably is, or should be, somewhat informed in regard to the doctrines and practices of the oldest and largest community in Christiandom, must know that the Pope is not a monarch of any kind, absolute or other. He must know that the Pope has no civil authority over anyone in the world, except the handful of citizens in the independent country of Vatican City. And Dr. McCracken must, or at least should, know that the principles of Catholic doctrine by which the Church expresses its understanding of the teachings of Christ should never be called

"decrees" by literate people, and that they are *not* pronouncements on questions in social science, law, medicine, or economics. The truth about these matters is easily obtained in any good library in a short time, at most an hour or two.

Of course, Dr. McCracken knows that the totalitarianism of Soviet Communism is a tyranny over the total life of the people under its power. And it seems impossible to avoid the conclusion that any Christian minister must know enough about the history of Christianity, and the teaching of the oldest and largest group in the Christian family, to know that the Catholic Church is in no sense totalitarian—that it in no sense orders and directs the total life of Catholics. He must know that its teaching in faith and morals is very far short of the direction of the lives of the victims of Soviet Communism. To suggest that there is anything in the doctrines of the Church approaching the awful tyranny and the terrible punishment of those who attempt to disobey the tyranny of Communism, that there is a similarity between that and the beliefs and teaching and practices of the Catholic Church, seems to me a shockingly slanderous statement for anyone to utter concerning other Christians.

Dr. DeWint was reported in the *Times* as discussing the differences between the Roman Catholic and the Protestant faith and of remarking that the differences were crucial and pregnant of consequences. Among the "distinctive tenets of the Protestant faith" which he listed were the following: (1) "the achievement of salvation by free will rather than by 'monetary' gift." In the context of this discussion this was clearly Dr. DeWint's attempt to tell his congregation that the Catholic Church taught the achievement of salvation by monetary gift. It seems incredible that Dr. DeWint should not know that this statement is wholly false, that the Catholic Church certainly does not teach that salvation can be bought with money.

(2) "A belief in individual freedom unbossed by any hierarchy and a repudiation of all clericalism." This passage clearly implies that Catholics (no qualification) do not repudiate clericalism and are "bossed" by the hierarchy, and is clearly slan-

derous and false. It would be interesting to know in what ways Dr. DeWint believes that the "bossing" of the hierarchy limits the "individual freedom of individual Catholics" in our society, and it would be interesting to know what he means by the "clericalism" which he thinks Catholics, as Catholics, do not repudiate.

(3) Dr. DeWint is quoted as saying that the Protestant clergy does not "tell you what books you can read and cannot read, what movies you are permitted to view and where you must send your children." This seems to me tantamount to telling his congregation (most of whom probably would know that it is not true, however) that Catholics cannot read books without asking permission of the clergy; that they cannot go to movies without getting a similar permission, and that they cannot select schools for their children without getting the permission of the clergy. A very little inquiry among informed people, whether Catholic or Protestant as a matter of fact, would demonstrate that none of these statements is true.

A third item, it seems, should go in here, though it was not delivered as a part of a sermon. I refer to slander in the *Letter to Presbyterians,* unanimously adopted by the General Council of the General Assembly of the Presbyterian Church in the United States, issued through the office of the General Assembly, and signed by John A. McKay, Chairman, and Glenn W. Morse, Secretary:

"Communism, as we know to our sorrow, is committed on principle to a philosophy of lying; democracy, in fighting Communism, is in danger of succumbing through fear and in the name of expediency, to the self-same philosophy. It is being assumed, in effect, that in view of the magnitude of the issues at stake, the end justifies the means. Whatever the outcome of such a war, the moral consequences will be terrifying. People will become accustomed to going through life with no regard for rules or sanctities."

This paragraph, of course, has no slander of Catholics, but it must be considered as related to the next paragraph. Of course,

it would be considerably better if the "fear," and the "expediency," were identified, and also who are assuming that the end justifies the means. But the real point of the above passage, as a part of a slanderous statement concerning American Catholics, comes out in the paragraph that follows immediately:

"A painful illustration of this development is that men and women should be publicly condemned upon the uncorroborated word of former communists. Many of these witnesses have done no more, as we know, than transfer their allegiance from one authoritarian system to another. Nothing is easier for people, as contemporary history has shown, than to make the transition from one totalitarianism to another, carrying their basic attitudes along with them. As a matter of fact, the lands that have suffered most from communism, or that are most menaced by it today, Russia and Italy, for example, are lands which have been traditionally authoritarian in their political and their religious life. And yet the ex-Communists to whose word Congressional committees apparently give unqualified credence are, in very many instances, people whose basic philosophy authorizes them now, as in the past, to believe that a lie in a good cause is thoroughly justified."

Anyone who has been familiar with the witnesses who have been testifying in these committees will probably know that Dr. McKay here must be referring to such witnesses as Mr. Budenz, Miss Bentley, and Dr. Bella Dodd, former Communists who abandoned Communism and became Catholics. The idea that this is "no more than to transfer their allegiance from one authoritarian system to another" indicates that Dr. McKay knows very little about Communism or Catholicism, or both. The further remark about their making a transition from one "totalitarianism" to another (assuming that Dr. McKay thinks he is telling the truth) is obviously proof that Dr. McKay, strangely for a man in his position in the religious life of the country, knows very little about the fundamental teachings of the Catholic Church, and its activity as an institution.

The Catholic Church is not a totalitarian institution. It does teach *religion* in a way that makes it permissible to apply the word "authoritarian" to it, under certain conditions, in the area of faith and morals.

In the next clause Dr. McKay is saying that people go from Communism to Catholicism because it is an easy transfer which allows them to keep the basic attitudes they held as Communists. Of course, the crowning slander in this slanderous passage is that the basic philosophy of Catholicism, like the basic philosophy of Communism, authorizes the adherents to believe that a lie in a good cause is "thoroughly justified," and that the basic attitudes of Catholics and Communists are essentially identical.

The basic attitude of Communism, as all students of the movement seem to agree, are: atheism, total control of the lives of its subjects, assassination of those who disagree with it, and winning its way by the regular use of torture, murder, and slavery. Dr. McKay issues these false and slanderous statements against millions of his fellow Christians under the imposing headline: "The Majesty of Truth Must Be Preserved at All Times and at All Costs." He seems to operate under an unpublished qualification, "except when falsehood may serve to injure one's Catholic neighbors." It is of first importance in considering this outrageous exhibition (which is the result of either ignorance or malice) that we keep in mind that Dr. McKay was speaking to our friends and fellow citizens, the Presbyterians, not for them.

As was to be expected by anyone who knows something about the general attitude of American Protestants, Dr. McKay's manifesto has been roundly denounced by the members of the secular press, and Protestant leaders, as well as by the Catholic press. Rev. Dr. Daniel A. Poling, editor of the *Christian Herald,* speaking in the pulpit of the Marble Collegiate Church on September 14, according to an article in the New York *World Telegram and Sun,* of November 2, 1953, and alluding directly to Dr. McKay, said:

"It is unbelievable but true that there are a few, but a potent few, in Christian leadership who call for recognition of

Communist China by the United States and for the substitution of Peiping for Formosa in the United Nations.

"In Korea, Communism has executed more than 600 of his brother clergymen. Entire populations in Estonia, Latvia and Lithuania have been exiled, enslaved or executed in pogroms surpassing Hitler's frenzy.

"Would this leader among us have us believe that anti-Communism is as dangerous and may be even more dangerous than that?"

The article further reported:

"For some years he [Dr. McKay] was an editorial advisor of the pro-Communist 'Protestant' magazine. Late in 1947 he sponsored a report by a group of clergy who visited Yugoslavia, at the latter's expense, and brought back a whitewash of the Tito government, then part of Stalin's Cominform." And Dr. McKay in his letter defined Communism as "a secular religious faith of great vitality."

Anyone familiar with the material published in *The Protestant* knows that it was not particularly Protestant, but was patently pro-Communist and bitterly anti-Catholic.

The Religious News Service in a dispatch widely published on November 14, quoted Dr. Poling as saying further on the same occasion: "I disassociate myself from distinguished religious leaders in their published, unqualified support of the statements released by Dr. John A. McKay, Moderator of the Presbyterian General Assembly and President of Princeton Theological Seminary . . . The statement also draws front page applause from the Communist *Daily Worker* which identified it as an attack on duly constituted agencies of the Federal Government, and as a 'declaration of liberty.' It is my conviction that this statement renders a distinct disservice to the Christian Church, to my Protestant faith, to American freedom and to the unity of all free peoples and to all who would be free."

The *Southern Presbyterian Journal,* published in Weaverville, N. C., discussed Dr. McKay's document in an article written by its associate editor, Dr. L. Nelson Bell, in part as follows:

"In our judgment this is one of the most insidiously dangerous documents we have yet seen, not only because of its implications, but also because of its source and the deference and weight which will be given it for that very reason.

"The basic, even fatal, weakness of this statement is its failure to recognize Communism for what it is. It affirms that negotiation with Communism is the proper approach and it belabors as a 'cynical attitude' the viewpoint held by many, that such negotiations play directly into the hands of the Communist . . .

"The following sentence could well cause laughter in the Kremlin: 'We should meet them officially whatever their ignominious record, and regardless of the suffering they may have caused us. We too have reasons for penitence and stand in need of forgiveness . . .'

"Admitting our own need for penitence and forgiveness before God, we refuse to have the record of American idealism and world-wide philanthropy compared with the ruthless invasion and exploitation of Poland, Estonia, Lithuania, Latvia, East Germany, Hungary, Czechoslovakia, North Korea, China, etc., etc., etc., and the carefully planned infiltration of other nations which is going on today, with the same ultimate view of destruction and exploitation . . .

"Further, two-thirds of this statement is directed against present activities to expose and root out Communism in America. Admitting that innocent men have been attacked, and that this is both unfortunate and un-American, it is also a fact that many men who should have known better have permitted their 'social passion' to lead them into positions, and into associations, where any serious attempt to expose Communist infiltration would find them in the limelight; having, to say the least, exercised abysmally poor judgment.

"That Dr. McKay has found himself in this unhappy position probably accounts for the vigor of part of this statement."

The Monitor Bomb

The sixth item to be discussed under the title of this chapter is the story of the *Monitor* "bomb." The *Christian Century* on November 25, 1953, carried an article under the headline, "The 'Monitor' Bomb." This article was based on a front-page column in the November 10 issue of the *Christian Science Monitor,* written by Joseph C. Harsch. I quote from the *Christian Century.*

"Protestants, wrote Mr. Harsch, are beginning to see evidence in the wholesale discharges of 'security risks' from government posts in Washington, 'that the open Roman Catholic attack on Communism spearheaded by Senator McCarthy actually is directed as much against Protestantism at home as it is against the Kremlin abroad; even that Roman Catholic fervor against Communism may turn out in the end to be primarily a vehicle of an assault on Protestantism.'

" 'While the facts are not available in full,' wrote the *Monitor's* correspondent, 'enough information has been gathered in Protestant circles to make it clear that the activities of Senator Joseph R. McCarthy (Rep.) of Wisconsin have had the incidental effect, whether accidental or intentional, of increasing the proportion of Roman Catholics to Protestants employed in the public service . . . Government officials,' reported Mr. Harsch, 'seeking to protect their departments and bureaus from McCarthy attacks, have increasingly resorted to the practice of employing Roman Catholics as security and personnel officers. This appears to provide immunity from attack. The sequel is that the proportion of Roman Catholics included in the dismissals is low, and the proportion of Protestants high.'

"As proof, Mr. Harsch proceeded to report some definite figures. 'Inquiries by this reporter,' he wrote, 'have failed to find a single Roman Catholic among officials dismissed from the State Department. A Protestant compilation of dismissals from the Foreign Operations Administration [the Stassen organization] indicates that 80% of all dismissals are Protestant and that

many of the 20% of dismissed Roman Catholics were subsequently 'reabsorbed' in the service. If the present trend were to continue, Roman Catholics, who are a minority of the American population, would become the majority of federal employees.'

"Then Mr. Harsch drew his moral. 'It is the implication,' he said, 'of this possibility' that under cover of a search for Communists or commie sympathizers a drive may be under way to load the government with Roman Catholics, which is rousing Protestant apprehensions and concern. The evidence to substantiate such a concern among Protestants is not conclusive. The Presbyterian statement is conclusive evidence of the existence of the concern."

The *Christian Century* said that "Mr. Harsch did not categorically assert that this charge is true. He did say that Protestants are beginning to ask whether it is true. As a reputable journalist he would not have written his article had he not believed that there is justification for that suspicion. Neither would the *Monitor* have given the article such prominence had there not been a belief in its editorial offices that its correspondent was on the trail of a noisome condition which needed to be brought into the light."

The *Christian Century* says on its own behalf:

"Now that the article is published, if its charges are not quickly disproved the concern of which it speaks will become widespread among the nation's Protestants.

"If the investigation proves that it rests on a foundation of error, that error should be acknowledged and suitable apology made. We are confident there will be no desire to evade this responsibility in the offices of the *Monitor.*

"We have heard from time to time rumors of close relationships between Senator McCarthy and a few Roman Catholic leaders in Washington. We have been told stories about men in government departments where the McCarthy fire has been heaviest who have gone to one or two priests to defend their records and to obtain an assurance of security. But we have dismissed all such tales as no more than examples of the sort of

unprovable and often malicious rumor which always circulates in the national capital. Lacking facts, we said nothing."

But now, "lacking facts," the *Christian Century* abandons its virtuous role as a responsible journal, and joins Mr. Harsch and the *Christian Science Monitor* (which also lacked facts), and publishes three columns of malicious rumor, suspicion, and innuendo, to the discredit of American Catholics and the security agencies of the United States Government.

A natural reaction to these outbursts is that, if Mr. Harsch were actually the kind of journalist which the *Christian Century* credits him with being, he would not have started this affair on a mere suspicion, without evidence to substantiate the concern of which he wrote. If the *Christian Science Monitor* were as careful and unbiased as the *Christian Century* credits it with being, it would not have spread this gossip over its front page without any evidence to back it up. If the *Christian Century* had not lost its virtue (which it credits itself with having once had), it would have waited to find out whether there is any truth behind this brilliant yellow and ill-smelling journalism before it got all the possible unfavorable implications against American Catholics out of it.

The statement that the Roman Catholic attack on Communism is "spearheaded by Senator McCarthy" is nonsense. As the Boston *Pilot* remarked on November 14, 1953, in commenting upon the disgraceful journalism exhibited by the *Monitor* in this instance, "the Catholic attack on communism was spearheaded a long time ago, beginning with Pope Pius IX many years before the discovery of Christian Science." Senator McCarthy is a Catholic, as Senator Jenner and Congressman Velde are not Catholics. They all seemed to be engaged in very much the same kind of activity. If Senator McCarthy is spearheading a Catholic attack on Communism, then there must be two Methodist attacks on Communism, one spearheaded by Senator Jenner, and one spearheaded by Congressman Velde.

Regardless of whether one approves or disapproves of Senator McCarthy's method of doing what he is doing as chairman of a

senatorial committee, the fact remains that he is in no sense a spearheading spokesman for a Catholic attack on Communism. Senator McCarthy is obviously the senatorial spokesman—at least the leading senatorial spokesman—for the extreme right wing of the Republican Party—the ultraconservative or, if you like, reactionary, anti-liberal, anti-progressive, whatever your labels are, wing of the Republican party.

The idea that Senator McCarthy is spearheading a Catholic attack on Communism is something that no reputable journalist should write; the suggestion that the Roman Catholic fervor against Communism may turn out in the end to be primarily a vehicle for an assault on Protestantism, by a journalist who presents no evidence of its truth, is only scandalous innuendo. The remark that the evidence is not conclusive even shows poor taste in selecting an occasion for restraint. The evidence is obviously non-existent.

Any informed citizen knows, I suppose, that Senator McCarthy does not fire government employees, and that the various committees and boards which have the responsibility of dropping people from the federal service are not composed of Catholics.

The idea that when one shoots at Communism he hits Protestantism is a suggestion which I should think the *Christian Science Monitor* and the *Christian Century* would hesitate to spread abroad quite so freely, even if done in an effort to discredit Catholics.

The *Christian Century* says that the disproportion of Catholics to Protestants in the federal service has not been brought about by hiring more Catholics, but by firing more Protestants. The "fervor against Communism," as Mr. Harsch calls it, is so almost universal and so intense among Catholics (Communism and Catholicism, contrary to Dr. McKay, are so almost totally antithetical), that it is not surprising that not many Catholics would ever be fired from federal service, or any other service, for being in any sense of the word pro-Communists.

I am confident that most informed people will agree that only a very small proportion of genuine Protestants—that is, active,

believing Protestants—would be in any different category from the Catholics. It is fairly common in this country for persons who are neither Jewish nor Catholic to call themselves Protestants, even though they have no actual contact with any kind of organized Protestantism. I think it is, therefore, entirely probable, considering the gross carelessness, or worse, of Mr. Harsch and the *Monitor,* that what they are talking about is not the firing of Protestants, but simply the firing of non-Catholics, whose accurate label probably would be "agnostics" or "atheists."

The *Christian Century* says that if the charges "are not quickly disproved the concern of which it speaks will become widespread among the nation's Protestants." Notice that the *Christian Century* calls for the charges being *disproved,* not proved! The Catholics who are charged with this conspiracy must prove themselves innocent, rather than the *Christian Science Monitor* and Mr. Harsch must prove them guilty!

The *Christian Century* concludes: "It would not be responsible journalism to make public charges of such gravity and leave them supported only by evidence admittedly not conclusive. Second, the administration owes it to the nation to make its own *complete examination of all the dismissals and rehiring so far made and to report the results* [*sic*], and all of us as decent citizens and Christians need to reserve judgment until these things have been done." (Italics supplied.) I think it will strike many people that it would better become decent citizens and Christians not to make such charges in the first place until they had something dependable to go on. The reserving of judgment should have been exercised before the publication was made, not after it is made and the maximum of religious bias had been extracted.

The editorial in the Boston *Pilot* of November 14, 1953, concludes with the following pregnant paragraph:

"If Mr. Harsch were an incompetent newcomer and the pages of the *Monitor* a stranger to innuendoes of this kind, the incident would be unimportant. Neither is the case. Mr. Harsch has a respectable record and knows the implications of his re-

marks even when put on the lips of others. And the *Monitor* has unhappily had experience in casting Catholic questions in an unfavorable light. In trying to build up antagonism between Catholic and Protestant, on the Communist issue, whom is the *Monitor* serving? Not truth surely, nor decency, nor peace. We do not ask any special favors of the *Monitor,* but we do not expect any. Why should some men be the enemies of truth and justice?"

Fortunately, we did not have to wait long for proof of the totally fictional nature of the "report" by Mr. Harsch. In reply to an inquiry from Patrick Scanlan, Managing Editor of *The Tablet,* George F. Wilson, Assistant Administrator-Personnel, Bureau of Security, Consular Affairs, and Personnel, of the State Department, wrote the following letter:

"The Secretary has asked me to reply to your letter of Dec. 8, 1953 regarding the article of Mr. Harsch appearing in the 'Christian Science Monitor' on Nov. 10, 1953.

"I have no way of knowing, of course the source of Mr. Harsch's alleged statistics nor the manner in which he compiled them. I am unable therefore to criticize or comment on the reliability of his statistics, but I must take issue with the conclusions he draws from them.

"The Department of State, in common with other Government agencies operating under Civil Service rules, is expressly prohibited from making any inquiries concerning the religious affiliation of applicants or employees.

"Insofar as its Civil Service employees are concerned therefore the Department would have no way of knowing either the religious affiliation of an individual employee or applicant, nor the proportion of its employees who are adherents to any particular religious organization or belief. By the same token it would be impossible for a Department to know the religious affiliations of employees affected by separation.

"Even if the Department did know the religious affiliation of each of its employees, it would be impossible under the reduction in force regulations which specify very precisely the bases on

which employees compete for retention to make selections for separation on religious or other extraneous grounds.

"It would be equally impossible for the Department to manipulate separations from among Foreign Service personnel and for essentially the same reasons.

"The Department makes no inquiries and maintains no records concerning religious affiliations of such personnel, considering such information to be purely extraneous to any legitimate considerations governing the Foreign Service.

"Any suspicion, therefore, that religious considerations have entered in any way into either the selection or retention of employees and officers in the Department of State is purely without foundation."

A news story by J. J. Gilbert, in the Hartford *Catholic Transcript* (of January 9, 1954) said in part:

"A Protestant compilation of dismissals from the Foreign Operations Administration indicates that 80 per cent of all dismissals are Protestants and that many of the 20 per cent of dismissed Roman Catholics were subsequently reabsorbed into the service.

"The persons who were laid off in the Foreign Operations Administration were dismissed because Congress cut the appropriation for this work by about $15,000,000. Former Governor Stassen, head of FOA, was given 120 days by Congress to get administration working within the new budget. All dismissals were the responsibility of Mr. Stassen. He even devised a widely publicized intelligence test to help him in making the reductions in force. The security office of FOA had nothing to do with it.

"Robert W. S. McLeod, head of the Bureau of Security, Consular Affairs and Personnel of the State Department, one of the government agencies mentioned by Mr. Harsch, is himself a Protestant. Some time ago a secular magazine spoke of 'McCarran, McCarthy and McLeod,' and intimated that the Pope 'is in the saddle' in Washington. But actually Mr. McLeod is a lay leader of the Methodist Church. His security officer, the man actively in charge of such matters, is named Flinn, but Flinn is a Protestant."

Probably the most astonishing statement in this document by Mr. Harsch (a man presumed to be well informed on the current situation in America, since he is the Washington correspondent for *The Christian Science Monitor*) is his remark that it has been impolite for many years to air in public print "old issues" between Protestant and Catholic. He does not define or illustrate the "old issues," but he does say that the "tacit truce" has "broken down to the point where news of the views and activities of the churches . . . is reaching the front pages along with political news." Mr. Harsch must know that thoroughly hostile comments on alleged views and activities of American Catholics are commonplace items in the newspapers and magazines, and that books of the same nature appear frequently and are widely sold. Mr. Harsch may not be well enough informed to know that this material is saturated with misinformation, unsupported accusations and bitter innuendoes. But he must know that Senator McCarthy is purely a political, not a religious, phenomenon. The credit or discredit for the senator's activity, whether held to be good or bad, belongs exclusively to the Republican organization of the United States Senate. Mr. McCarthy, as committee chairman, speaks for no one else.

The nearest Mr. Harsch came to any "facts" in his article is:

"A Protestant compilation of dismissals from the Foreign Operations Administration indicates that 80 percent of all dismissals are Protestant and that many of the 20 percent of dismissed Roman Catholics were subsequently 'reabsorbed' into the service."

Had Mr. Harsch been interested in relevant information he could have learned that Mr. Stassen as director of FOA was required by Congress to cut his budget by about $15,000,000, which caused the dismissals Mr. Harsch was writing about. Mr. Stassen, according to *Who's Who in America,* is a Baptist, a Mason, has been cited for distinguished service by the World's Christian Endeavor Union, is a former president of the International Council of Religious Education, and has been active in the National Conference of Christians and Jews. That such a man was involved in a conspiracy with Senator McCarthy to

fire Protestants and to protect Catholics in government service seems sufficiently absurd to have prevented its exploitation by any reporter not devoted to sensational writing regardless of ordinary truth or decency toward fellow Americans. Another remarkable conclusion that follows inevitably from the "compilation" on which Mr. Harsch depended is that there were *no Jews, agnostics or atheists* dismissed from FOA to meet the $15,000,000 budget cut. What Mr. Harsch should have written about on the basis of his "facts" is Senator McCarthy's drive *against Christians* (no others dismissed!) in favor of Jews, agnostics and atheists in government service.

Months after the official answer of the State Department and the news reports had demonstrated the total absence of any actual basis for the journalistic lapses of Mr. Harsch, *The Christian Science Monitor,* and *The Christian Century,* a careful search failed to reveal the ethically required and over-due retractions and apologies. All three guilty parties remained silent. Since the *Monitor* was clearly the most culpable of the three, I wrote on April 8, 1954, to the Editor of that paper telling him I was discussing this matter in a book soon to be published, and concluded as follows:

"I am writing to ask if you have ever made the appropriate correction and apology. If so I shall be glad indeed to have a copy of your published statement and to give it full credit in my discussion."

On April 28, 1954, the editor, Edwin D. Canham, replied. After thanking me for my inquiry Mr. Canham wrote:

". . . we have seen and studied the state—issued by the State Department and the news story by J. J. Gilbert. In our judgment these statements either deny things Mr. Harsch did not say or are expressions of opinion. We do not feel they call for any correction or apology. We are in no doubt whatever as to the validity of Mr. Harsch's article, but do not intend to make a continuing controversy out of it.

"As to 'The Christian Century's' suggestion that we should produce further evidence [note the word 'further'—no evidence

having been produced] we will be glad to do so when and if it appears that such publication would contribute to the public good. Our sole interest lies in providing readers with accurate and significant information, not in initiating or perpetuating a controversy."

A brief correction and apology could hardly have set up a perpetual controversy. Dismissing the official statement of the State Department and the news story exposing the unreliability of Mr. Harsch's "reporting," as either denials of "things Mr. Harsch did not say" or as mere "expressions of opinion," both seem clearly inaccurate, and constitute a striking example of avoidance of editorial responsibility. If Mr. Canham really believed in the validity of Mr. Harsch's article and thought that he could produce *any* evidence to back it up, he certainly should, and doubtless would, produce it at once as due, in elementary decency, to his fellow Americans whom the article slandered. If Mr. Canham actually believed that any "accurate and significant information" (rather than simple accusation and innuendo) could be found in Mr. Harsch's article, he doubtless would have pointed it out instead of characterizing the official exposure of the whole thing by the State Department as he did in the remarks quoted just above. A fear of controversy does not excuse an editor from offering proof, correction, or apology in such circumstances as those in which the editor of *The Christian Science Monitor* finds himself through his failure to provide the test of "accurate and significant information" to his issue of November 10, 1953.

8.

The Conduct of Controversy

IF THE CONTROVERSIES that confront American Catholics today are to end short of the extreme manifestations of those of a century ago, the Catholic defenders must *know how* competently to conduct controversy, how to meet their detractors without stooping to the methods upon which the detractors rely, above all how to talk to the millions of innocent, uninformed, deceived, decent Americans in the "audience," and to ignore the few bigots present.

A few years ago, while attending a teachers meeting in New Jersey, I joined a group of people who were discussing the teaching of public speaking and debate. There was present in the group a young priest from one of the Catholic academies of the state, and in the midst of the discussion he remarked that he had found a certain prayer very effective in the teaching of public speaking. This statement caused rather startled expressions and the raising of eyebrows, and everyone turned toward him eager to learn what he meant.

He took from his pocket a small pack of cards and distributed them to the group and said, "This is the prayer which I distribute early in each semester to my students in classes in public speaking and debate." The expressions of surprise changed to smiles and nods of approval, and words of "Good," "Excellent," "This is what they need." This was the prayer: "O God, help me to keep my big mouth shut until I know what I am talking about. Amen."

If all those, in the various fields of thought, who incite or indulge in controversy in the United States would follow the

simple principle of not writing books, or giving lectures, or preaching sermons, until they know what they are talking about, the inevitable controversies of our society would be much more helpful and less frequent, though, of course, many would still be inevitable. We must and will have controversies so long as we remain alive in a reasonably free society. But surely it is not necessary to have so many controversies brought about and indulged in by people who have never taken the trouble to find out what they are talking about before they begin to talk.

The Primacy of Knowledge

One should realize that denial—simple denial—of even a totally unsupported assertion, while perhaps in many situations sufficient in a law court, is not, in the ordinary affairs of society, sufficient to dissipate the effect of gratituitous accusations and unproved assertions. This is particularly true if the assertion is one which fits in well with prevailing emotions of certain sections of the population. When, for instance, men like Mr. Blanshard, Professor Nichols, and Bishop Oxnam utter or write totally unsupported and unsupportable statements which are serious reflections upon the Catholic Church and their Catholic fellow citizens, they are in a position to expect their untrue remarks to be accepted by a good many people in the United States. And those who accept the words of these men as true are not bigots. They are simply unacquainted with the teaching of the Catholic Church and the beliefs and practices and aspirations of American Catholics, and they have been emotionally prepared to believe the preachers of the present campaign, first, by old prejudices which go back to Maria Monk and the Ku Klux Klan, and second, by the positions which these men hold, their training and experience, and the endorsements which they get from others who like their activity. All of this means that the current campaigners have a favorable hearing and an emotional acceptance which cannot be dissipated by simple denials from those who happen to know that the statements these men make are false.

It follows that, when a Catholic enters into a controversy concerning the false statements of these writers and speakers, he needs to know much more about the situation than they apparently know. It is only by valid evidence and sound argument that any effective answer can be made to such propagandists. Accurate knowledge is the first requisite.

In order to answer propaganda of this sort, the effective controversialist must not only know what is the truth on his side of the discussion, but to be effective he must be sure that he really understands the position which he is trying to answer. He who wishes to refute what Jones says must not only know, in general, what he needs to say to refute the general position of Jones, but he must know exactly what Jones means by what Jones says. If Jones says, "I believe in A," and you wish to discuss Jones' belief intelligently, you must take "A" as Jones means it. It is the "A" that Jones has in his mind and which he expresses that you must answer, not your idea of what Jones ought to understand by "A." Obviously, Smith may help Jones to a better knowledge of the meaning of "A," but Smith is in no position to do this until he knows what Jones means when he says, "I believe in A."

In short, in order to take an effective part in any discussion or debate on a controversial question, the participant must know both sides of the question—not only his side, but his opponent's side, as his opponent sees it.

The Meaning of Ancient Language

The language which any person has used in a speech, a book, a letter, or the language of ancient historical documents, should be discussed in terms of its actual meaning. By actual meaning I mean a meaning which can be legitimately expressed by the language and which can be established as the meaning of the person who used the language.

For instance, when Justice Rutledge of the Supreme Court wrote in his famous dissenting opinion, in which the so-called

Rutledge Doctrine was first given expression in an important setting, he said that the "purpose" of the First Amendment "was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. The prohibition broadly forbids state support of religion in any guise, form or degree." Its purpose was "to uproot" established churches "and ban their return forever." This, I submit to anyone who is acquainted with constitutional history and the origin of the First Amendment, is an example of extreme distortion of the meaning of language. As has been shown earlier, there is no evidence whatsoever that the purpose of that part of the First Amendment under discussion was anything other than to express, not to create, the situation that the federal government could not, under the existing Constitution, prefer one religious group to another. In other words, we had to have in this country, so far as the United States government is concerned, equality before the law of people of all religions and of none.

A knowledge of the ordinarily accepted meaning of words is, of course, the first step toward understanding the language of others. But, since it is possible to use words in different meanings, many phrases are clearly ambiguous; it is often necessary to do much more in order to interpret accurately what someone has said or written than simply to look up the meaning of the words in the dictionary. In an admirable little book entitled *How to Talk with People,* Dr. Irving J. Lee of Northwestern University has reported: "A seventh grade class in English was able to make up thirty sentences in which the word 'set' was used differently each time."

Mr. Justice Frankfurter expressed the idea most effectively in his concurring opinion in the case of *Addison v. California* (1947). In opposing a specific meaning of a phrase in the Constitution which did not say what was expressed in the meaning to which Justice Frankfurter was objecting, he said: "It would be extraordinarily strange for a Constitution to convey such specific commands in such a roundabout and inexplicit way.

After all, an amendment to the Constitution should be read in a 'sense most obvious to the common understanding at the time of its adoption,' for it was for public adoption that it was proposed." (The interior quotation is from Justice Holmes.) And Justice Frankfurter said further in the same opinion, "Remarks of a particular proponent of the Amendment: no matter how influential, are not to be deemed part of the Amendment. What was submitted for ratification was his proposal, not his speech."

In spite of the fact that various Justices of the Supreme Court do not always follow this doctrine, so well expressed by Justice Frankfurter, many eminent people, discussing the activities of the Supreme Court, from Thomas Jefferson down, have expressed the same idea over and over again—not always as felicitously as Justice Frankfurter expressed it in these passages, but essentially giving the same doctrine in regard to the interpretations by the Supreme Court.

Ascribing False Motives

A fault of a great deal of modern controversy, which should be avoided by all informed and honest debaters, is the device of ascribing false motives to an opponent. This is a favorite method of incompetent or dishonest editors and commentators.

One of the many examples of this technique to be found in Mr. Blanshard's *American Freedom and Catholic Power* is his statement: "When an American Catholic Bishop says fervently that he accepts the doctrine of the separation of church and state, the skeptical inquirer may turn his eyes southward and see what the Bishop means by this profession of an American doctrine." Mr. Blanshard, of course, offers nothing to support this insult to the American Catholic bishops. If he investigated the situation he was discussing, he must necessarily know that American Catholic bishops have supported the American doctrine of separation of church and state from the beginning, and if he ever discovered any evidence that any American Catholic bishop wanted in the United States the condition that obtains in

parts of South America, he failed to give that evidence to his readers.

Instead, Mr. Blanshard follows this statement with a long paragraph in which he discusses what he calls the "church-dominated governments of South America." He has two footnotes attached to this paragraph, and if the reader will trace down the footnotes in the back of the book this is what he will find. For the first footnote he will find that Mr. Blanshard has "Detailed discussion of this situation are contained in Howard, in Barclay, and Meacham." Then if the reader will turn to Mr. Blanshard's bibliography, he will find that "Howard, Barclay, and Meacham" refer to three different books. If he reads these he may find (and of course he may not find) evidence to support the remarks that Mr. Blanshard makes about the church-dominated governments in South America. But he would not find evidence to support Mr. Blanshard's ascribing false motives to the American Catholic bishops. His second footnote refers to a Latin text concerning concordats, and a reference to Meacham covering a concordat with Guatemala in 1852. The idea that a concordat with Guatemala one hundred years ago reveals anything about the aspirations of American bishops or their attitude toward the Constitution of the United States today would, of course, hardly occur to any careful scholar.

Professor Nichols remarks that when President Roosevelt sent Mr. Taylor as his personal envoy to the Pope, he was recognizing "the Pope as the head of the Catholic church, as political sovereign over American and other Catholics" and further, "At the moment the most considerable segment of the papal subjects [*sic*] in terms of size of episcopate, political subserviency, and financial power, is the American Catholic bloc . . . The Vatican, of course, has never concealed its desire to change the American Constitution in this regard to a regime of Roman privilege and official intolerance. The American laity and even the prelates, however, continued through the '30s to dissimulate on this matter." All these vicious charges are necessarily without sub-

stantiation. They are all instances of simply ascribing false attitudes, emotions, and motives to his Catholic fellow citizens.

I do not wish to give the impression that only those who are attacking the Catholic church and the American Catholics are guilty of ascribing false motives to people with whom they happen to differ. For instance, on the subject of the activity of Senator McCarthy of Wisconsin, well-educated, high-minded, and highly intelligent Catholics differ with great emphasis. That is probably to be expected, because such Catholics differ on almost every political question that can be imagined. However, in a certain section of the Catholic press, the ascribing of motives to some of Senator McCarthy's critics is perfectly illustrated by the frequent reference to them as "Communist sympathizers." It seems to me quite obvious that the assumption that the hostile critics of Senator McCarthy's activity are Communist sympathizers, or are in any way interested in promoting the spread of Communism, or the protection of Communists, rests upon the same avoidance of information that Mr. Blanshard's and Professor Nichols' remarks about American Catholics, as quoted above, must necessarily rest. The ascribing of false motives is a common and indefensible technique frequently used by different sorts of controversialists.

The Shelter of Ambiguity

The strange aspect of much of present controversy is the preference of the ambiguous over the specific. The shelter of a cloud of ambiguity is frequently sought by those whose position on various propositions cannot very well be maintained in the full light of accurate, specific expression. It seems that the most widespread use of ambiguity in order to avoid clear and specific language is easily the almost constant use of the phrase, "separation of church and state," or "complete separation of church and state," or "wall of separation between church and state," as a substitute for the language of the establishment clause of the

First Amendment. The shelter of the dense fog of ambiguity which is contained in the extreme ambiguity of one of these phrases seems to be sought almost universally by those who find the actual meaning of the constitutional language unsuited to their purposes.

As has been stated in detail elsewhere, the words "separation," "church," and "state" are three of the most ambiguous words in the English language. The phrase, "separation of church and state" can never have specific meaning except as that meaning is given to it by its context. Since the phrase does not occur in the Constitution of the United States, nor in the constitution of any state, it has no constitutional context and therefore cannot have any specific constitutional meaning.

Everyone in America, apparently, believes in the specific form of separation of church and state expressed in the Constitution. The modern propagandist, however, wants people to believe that the Constitution of the United States provides for various prohibitions which *might* be covered by the term "separation of church and state," but which cannot be accurately expressed by the language of the First Amendment. Consequently, they seek to get people to believe that the doctrine of the First Amendment is the separation of church and state. Once they can get that accepted, they can more easily get people to accept any specific meaning of this phrase, which has almost innumerable meanings, as the constitutional doctrine for the United States of America.

Even the Justices of the United States Supreme Court, when they have before them for interpretation and application the language of the establishment clause rarely so much as refer to this language. They discuss, instead, the totally ambiguous phrase, "separation of church and state" or "the wall of separation between church and state." This desire to function in an atmosphere of dense ambiguity is something to be regretted by anyone who is interested in accuracy and definiteness in constitutions, contracts, and judicial decisions.

Dr. Leo Pfeffer, attorney for the Commission on Law and Social Action of the American Jewish Congress, in the recent

New Jersey case concerning the distribution of Gideon Bibles in the public schools of that state, furnishes us with a striking example of a preference for the comforting cloud of ambiguity, away from the sunlight of specific language in a judicial decision.

This case concerned the desire of the Gideon's International to give away copies of the King James Version of the Bible in the high schools of New Jersey "to those pupils who request them." This action was opposed by a plaintiff appellant, Mr. Bernard Tudar, and Dr. Pfeffer argued the case before the Supreme Court of New Jersey for the appellant. He won his case.

In the court's opinion, Chief Justice Vanderbilt said:

"The charge here is sectarianism. The defendant Board of Education is accused of showing a preference by permitting the distribution of the King James Version of the New Testament, which is unacceptable to those of the Jewish faith and, in fact, in conflict with their tenets. This violates the mandate of the First Amendment, as incorporated in the Fourteenth Amendment, prohibiting the making of any law 'respecting an establishment of religion' and the requirement of Article I, paragraph 4, of the New Jersey Constitution that *'there shall be no establishment of one religious sect in preference to another.'*

"Our decision in this case must be based upon the undoubted doctrine of both the Federal Constitution and our New Jersey Constitution, that the state or any instrumentality thereof cannot under any circumstances show *a preference for one religion over another.* . . .

"The uncontradicted evidence presented by the plaintiff reveals that as far as the Jewish faith is concerned, the Gideon's Bible is a sectarian book, the teachings of which are in conflict with the doctrines of his religion as well as that of his child, who is a pupil in the Rutherford Public School. . . .

"We find from the evidence presented in this case that the *Gideon Bible is a sectarian book,* and that the resolution of the defendant Board of Education to permit its distribution through the public school system of the Borough of Rutherford was in

violation of the First Amendment of the United States Constitution, as incorporated in the Fourteenth Amendment, and of Article I, paragraph 4, of the New Jersey Constitution. It therefore must be set aside.

"It matters little whether the teachers themselves will distribute the Bibles or whether that will be done by members of the Gideon's International. *The same bias exists, that of preference of one religion over another. . . .*

"The judgment below is reversed and the resolution of the Board of Education of the Borough of Rutherford under review is stricken." (Italics supplied.)

Dr. Pfeffer has long been an opponent of the regular, standard, accepted meaning of the First Amendment, namely, that it expresses the fact that the federal government may not give a preference to one religious group over other religious groups—in other words, that Congress may not establish a religion. Dr. Pfeffer has been speaking and writing against this universal (previous to the present decade) interpretation of the establishment clause, which was the basis of the decision which he won in the Gideon's Bible case in the New Jersey Supreme Court. But he wants people to believe that the First Amendment provides for the *complete separation of church and state.*

Contrary to the language and history of the provision of the First Amendment prohibiting a preference for one religious group, Dr. Pfeffer has taken the position that the prohibition of the First Amendment is almost limitless in scope; that it expresses the concept that any legislation concerning religion is prohibited in the United States of America. For years he has been one of the most determined opponents of the exact interpretation of the establishment clause used by the Supreme Court of New Jersey on which he won his case concerning the distribution of the King James Bible in that state.

In a covering letter on the letterhead of the Commission on Law and Social Action of the American Jewish Congress, accompanying a copy of the court's decision, Dr. Pfeffer writes as follows concerning that decision: "On December 7, 1953 the Su-

preme Court of New Jersey in a unanimous opinion by Chief Justice Arthur D. Vanderbilt reversed a lower court decision and held that distribution of the Gideon's Bible in the public schools violated *the guarantee of separation of Church and State contained in the United States and New Jersey constitutions. This is the first decision of any court on this issue and should have great influence in other states.* It is also the first decision that relies on the testimony of social psychologists and educators on the effect upon children of the intrusion of sectarianism upon the public school." (Italics supplied.)

It is true that testimony was offered in this case concerning "the effect upon children of sectarianism in the public school," but it is not true that the decision relies on this testimony. The quotations above given show clearly the basis of the court's decision. Further, the question of the effect upon school children of sectarianism in the public school does not affect the language of the Constitution of either the United States or the State of New Jersey. At most this could only raise a legislative question in our country, not a constitutional question for the courts of New Jersey.

Since the decision of the court was based upon the specific meaning of the particular type of separation of church and state contained in the United States and New Jersey constitutions, which is the prohibition of any preference for one religion over another, it seems rather shocking that Dr. Pfeffer, the attorney who won the case, did not mention the specific basis for the decision, instead of utilizing the fog of ambiguity of the "separation of church and state."

Phrases out of Context

An unjustified interpretation, but one which has some shadow of justification, based upon using a phrase out of total context, is sort of a cross between ascribing false motives and simple false statements. It is the technique of making a writer say more, or less, than a total and accurate reading of his words would

warrant. But frequently this is in part the fault of the writer for using a somewhat careless expression. Let me illustrate this by an unfortunate situation for which I feel that I am somewhat to blame, since I made the misstatement of another somewhat justifiable.

Mr. Joseph L. Blau, in his *Cornerstones of Religious Freedom in America* (p. 20), mentions the fact that free text books are provided to parochial schools in five states, free bus transportation in twelve, federal subsidy lunches in eighteen. He then writes: "These subsidies, however, do not satisfy the ecclesiastical hierarchy. The demand that is put forth, both by them and in their name, is for full federal aid, 'without strings,' for parochial schools. It was asserted, for example, by J. M. O'Neill, of Brooklyn College, in *Commentary* for June 1947, that no bill that fails to provide for full federal aid to parochial schools is likely to pass. The political strength of the Catholic minority is being held over the heads of the public: 'Aid to parochial schools or no aid to any schools.' Thus the dismal story reveals an all-out effort to use political machinery to achieve a religious end."

There are many things the matter with this quotation from Mr. Blau. Of course, I did not put forth any "demand" for anything. I was prophesying. I was not speaking in the name of "the ecclesiastical hierarchy." I was speaking for myself and no one else. And as a matter of plain fact, I did not "assert" that "no bill that fails to provide for full federal aid to parochial schools is likely to pass," and I did not use the phrase "without strings." In the article to which Professor Blau referred, I mentioned a number of topics concerning which there were differences of opinion in America, such as Mr. Taylor's appointment to the Vatican, released time in public schools, public transportation for pupils to church schools, NYA and GI Bill of Rights funds for students in church schools, tax exemption of church property, and federal aid to parochial schools. Then I wrote:

"Each and every one of these proposals is as debatable as, for instance, peace-time conscription. Each should be supported

or opposed on its individual merits, the sole criterion being its value in terms of public welfare. Above all, no one, by virtue of the side he is on in such debate, should be held to be un-American, unconstitutional, or subversive of our traditions. Today appeals to this so-called principle [complete separation of church and state] are being used to deny opponents the opportunity of debate; they are attempts to gain debatable ends without the burdens and risks of debate."

This expresses my basic position which I have expressed not only in the article Professor Blau was discussing, but also in various books and articles and lectures concerning these topics. They are debatable topics upon which Americans naturally differ. They should be frankly and openly debated and the debate should be carried on without the aid of an imaginary constitutional provision. The decisions that should be the result of such a functioning of the democratic process in a free society should be made on the evidence presented as to whether any measures proposed on these subjects are or are not in the public interest.

Further on in this article, I took up federal aid to education, including aid to religious schools. I referred to the Aiken Bill (S-199) in Congress in the spring of 1947, and wrote:

"The subject has been argued pro and con many times. The opponents of federal aid to parochial schools have so far always won, and federal aid to education has always lost.

"There have been two principal arguments against extending such aid to parochial schools. The chief of these in recent years has been the untenable position that the United States Constitution forbids such aid. This contention has so far interfered with any full and fair debate on the merits of federal aid to education. I submit that it is time we had such a debate and that the question be decided on the sole issue of the effect such aid would have on the children of America, and particularly the children in backward and depressed areas and classes. A secondary argument against federal aid to parochial schools has been that such

aid would be a great hindrance to the proper development of public schools and therefore very bad for the whole country. That argument has merit and should be weighed."

I then came to the paragraph in which I used an expression which apparently gave some slight color to Mr. Blau's interpretation of my position, although it was inconsistent with the basic position I took throughout the article:

"My own opinion is that when all the above is done, the weight of evidence will be in favor of federal aid without distinction on racial or religious lines to all schools that are training American children for citizenship in the United States. The main arguments for this program are: (1) No bill which does not provide for all schools is likely to become a law, so the total need is left unserved; (2) literacy, health, patriotism, knowledge of history, of the duties of citizenship, of the problems of humanity, are needed by all youth of the country without regard to race or creed or type of school attended; (3) when the United States calls upon the youth of the nation in time of war (and needs literate, healthy, intelligent men) it does not ask only for the boys from the public schools but for those from all schools, and, alas, even for those who have never had any schools that were worth calling schools; (4) the Negroes who would be large beneficiaries of such federal aid would probably fare better in many sections if the administration were in the hands of church rather than civil authorities."

Of course, I do not believe that a law should express "distinction on racial or religious lines" on any subject. It never occurred to me that in writing this paragraph I was expressing approval of "full public aid" to parochial schools. That is something in which I do not believe and have never believed. It is something which I do not believe the Catholic education authorities would accept if it were offered to them. I think it is a wholly unreal proposition.

However, it seems that in writing on federal aid "without distinction on racial or religious lines to all schools," I did lay myself open in that single phrase to the charge which Professor

Blau made. I should have been more specific. Even so, I submit that Mr. Blau's report is not what I said, but is an interpretation of what I said, that the interpretation is inconsistent with my basic position in the article mentioned and that "without strings" is not a legitimate interpretation of the phrase, "without distinction on racial or religious lines."

Of course, so long as we remain a free society, the political strength of a Catholic minority, a Jewish minority, a Negro minority, or a Protestant minority will be just as legitimately exercised in the legislatures of our society as the political strength of any other group. Regardless of any consideration of whether or not members of the Catholic minority should be allowed to vote in Congress, it seems clear that any voting which they may do in Congress is using political machinery to achieve political ends, and not religious ends. Any discussion of this matter is necessarily a discussion of a political measure—incidentally, a measure on which Catholics differ with Catholics, and Protestants differ with Protestants. I think it is true that most informed Catholics would like to see some recognition on the part of the federal government, if it ever begins to spend millions in aid of education in general, that the parochial school system in this country is part of the American system of schools and should at least be recognized as such by some token grant as making a tremendous contribution to American education and citizenship, and one which saves the taxpayers many millions ever year.

Answering Your Opponent's Exact Position

Another admonition that should be carefully observed by all people who wish to participate effectively in proper controversy is: Answer your opponent's position, not something else which you wish he had said that happens to be easier for you to answer. If "A" is accused of stealing chickens, it is hardly a defense to accuse his accuser of forgery. While that exact situation obviously does not arise easily in criminal law, essential parallels to that situation are not uncommon in social controversy. For instance,

it seems obviously no answer to Bishop Oxnam's various erroneous statements concerning the Catholic Church and American Catholics to accuse Bishop Oxnam of being a Communist.

Of course, one's failure to hit the proper target in a controversy may very well be due to the ambiguity of one's opponent. But if it is possible, instead of guessing what your opponent means in an ambiguous attack, or picking out the most easily answered specific instance of his ambiguous attack, and answering that, the proper technique is to try to find out from your opponent exactly what he thinks he is saying. In other words, in any bypassing, in which your opponent says that "A" is true and you say that "B" is false, be sure that such a situation is not due to your failure to try to find out exactly what it is that you are answering.

A most striking instance of the failure of a writer to report accurately what he was arguing against was given by Mr. Blanshard. Rev. Francis J. Connell published a review of *American Freedom and Catholic Power* in the Spring 1950 issue of the *Cornell Law Review*. Mr. Blanshard published a reply to Father Connell in the same journal in the winter of 1951.

In his book (pp. 82-83), Mr. Blanshard had said: "For Catholic teachers in the public school system the hierarchy lays down rules in the moral manuals almost as definite as the rules for parochial school teachers. Such teachers . . . must remember their moral responsibility to the Church and not become mere creatures of the State. 'A teacher never is and never can be a civil servant, and should never regard himself or allow himself to be so regarded,' said the Catholic archbishops and bishops of England and Wales in a declaration on this point in 1929." A footnote here refers only to "Davis II, 88." Looking up Davis in Mr. Blanshard's bibliography, we find that it is a reference the four-volume *Moral and Pastoral Theology* published by Sheed and Ward in 1935.

In his review of Mr. Blanshard's book, Father Connell exposes Mr. Blanshard's scholarship in the following passage: "The truth is that the statement from which Mr. Blanshard quotes

has not a single word to say about the obligation of public school teachers toward the church. It refers to the obligation of the teacher toward the *parents of the pupils.*"

In his reply to Father Connell's exposure, Mr. Blanshard's comment was the following: "Of course, this is what the bishop *said* but Catholic bishops always disguise their school doctrines wherever possible in non-Catholic countries." Clearly, Mr. Blanshard was here saying that, because he could not trust bishops—or pretended he could not—in what they said about education in non-Catholic countries, he was justified in reporting that Catholic bishops had said something which he knew they had not said. This gross and deliberate distortion of an opponent's statement in order to make an answer easier passes for sound scholarship in certain circles in America.

Absolute accuracy in reporting, quoting, or interpreting, so far as that is humanly possible, is the only honest and effective basis for any participation in any controversy.

The Basic Techniques of Argumentation and Debate

Anyone preparing to participate in controversy on any subject in any area ought to be familiar with the basic techniques of argumentation and debate. These are the ways in which a free society functions. It is also true that anyone, even one who does not desire to participate in controversy, but who wishes to understand and be ready to vote upon the various questions which are presented to him on the radio, in the daily papers, and at various meetings day after day, ought to be familiar with these techniques. Every live, active, and informed citizen is constantly on the receiving end of this process of argumentation and debate. In order to protect himself from shoddy argument, bad emotional pleas, insincere or dishonest propaganda, one should be prepared to understand the strength and weakness of the argument, and to distinguish good argument from bad.

It is commonly held by students of rhetoric that the language of speech and the language of writing are usually in many ways quite different. This difference is doubtless much more marked in dramatic writing, and fiction, than in some other forms. For instance, a short story or a novel which is redone for the theatre is usually cast in language very different from that in the original document. Language which will be perfectly acceptable in a printed story will not be acceptable when live actors speak the story on the stage.

However, when we come to the field of argumentative and controversial talking and writing, it is widely held by teachers of rhetoric that the language of written argument should be as close as possible to the language of speech.

When one is reading he may pause to look up the meaning of words, or to ponder over sentences, or to consult authorities in regard to certain phrases or ideas presented before he goes on with his reading. But in speaking and listening, unless the language is instantly intelligible, something of attention is undeniably lost. When a hearer has to pause to think about what a speaker meant, or when he turns to the person beside him and asks what it was the speaker meant or said, the speaker is losing the attention of one or more of his hearers. Something in his speech is not reaching the people to whom it is being addressed. It seems well in most cases for writers, and for speakers, in the field of argumentation and controversy to try to have that instant intelligibility which is characteristic of all good public speaking.

A corollary to the principle of instant intelligibility is that a speaker can never speak effectively to an audience in any language other than the language of the audience. Effective and efficient communication in speech always uses the symbols common to both the speaker and the hearer. In good controversial writing, as in argumentative editorials, the feeling of direct, personal contact, as between speaker and hearer, facilitates the impression of other desirable qualities in one who is seeking con-

viction or persuasion. Much of this is inevitably lost if the instant intelligibility (which is impossible when a speaker uses other than the language of the audience) is not operative in the writer-reader relationship in controversy.

Sincerity in Controversy

"The importance of being earnest" is nowhere greater than in argumentative and controversial talking and writing. While it may be possible that certain people have an ability to give an impression of sincerity or earnestness when these qualities are lacking, this is not only unethical but also a dangerous situation from the viewpoint of mere efficiency. Certainly, a reader or listener who suspects that the controversialist is not sincere in what he is saying is not likely to be easily persuaded. Earnest conviction on the part of the hearer-reader is, in a large sense, only the result of earnestness on the part of him who tries to persuade. By and large, it is probably safe to say that without genuine sincerity the controversialist will not achieve thorough success.

Modesty in Controversy

Genuine modesty is without any doubt a highly desirable quality in the speaker or writer who wishes to gain thorough-going agreement from his listeners and readers. Genuine modesty is, of course, not the synonym for subservience or undue self-depreciation. It is wholly consistent with a feeling of competence and the ability to do the job one is undertaking to do. Self-respect and authority are perfectly consistent with true modesty if the authority which you exhibit is genuine and is really yours.

Proper modesty is never exhibited when speakers apologize for the fact that they are inadequate to the task before them, that most anyone might better have been chosen to do the job they are doing. If it is true that a speaker is unprepared, or does not know as much about his subject as the people he is talking

to, then he should keep still. If it is not true, he should not go through the false pretense of saying that it is, in a foolish attempt to curry favor with an audience. That is one of the poorest ways that has yet been discovered of gaining favor with an audience.

True modesty requires simply that a man make himself secondary to his subject, that he should not strut and bluster and pretend to possess attributes he does not have.

Brevity in Controversy

Another quality of good controversial writing and speaking is brevity. We must remember that brevity is always a relative rather than an absolute quality. What is appropriately brief depends upon the circumstances of the job to be done. Appropriate brevity means omitting all unnecessary words and sentences; it does not mean leaving out material which should be presented. Therefore, the proper length of any particular speech or article will depend upon the particular attendant conditions. Talking ten minutes may be too long under some circumstances, on some topics, before some people; talking five or six hours may be the right length, or even too short, in other circumstances. The offense against brevity is committed when one talks simply to fill up time because he does not know how to quit or because he cannot drop one point when he has said enough on it. It is the use of unnecessary language either in writing or in speaking.

Simplicity in Controversy

Simplicity is a quality for which all workers in the field of controversy should strive. Simplicity in rhetoric means free from cunning, duplicity, artificial ornament, pretentiousness, subtlety, and abstruseness. Its absence is marked by artificial ornament, bombastic style—in general, by exhibition rather than communication. Anything which is a parading of voice and vocabulary rather than direct, straightforward, clear, unadorned expression of thought and emotion is not simple. A speech which is a show

rather than a conversation usually is just that, because the speaker is violating the principle of simplicity. The artificial, the pretentious, the abstruse does not connect with the thinking and emotion of hearer or reader as rapidly as its opposite. There is little or no contact. It seems to be detached, impersonal, indirect. Obviously, simplicity is close to sincerity. The speaker or writer who is sincere usually treats his subject with simplicity. In fact, having one good quality aids us in getting others. In this field, the hollow rhetoric of insincerity and pretentiousness should be eliminated ruthlessly. Whatever is left will be better for such cutting, regardless of the nature of that which remains.

Vividness in Controversy

Vivid means strong, bright, animated, lifelike. Vividness is the result of the use of familiar language, familiar to the audience or the reader, in which the concrete and the specific is found instead of the abstract and the general. In *The Elements of Rhetoric,* A. G. Newcomer published a passage which has been widely quoted, illustrating the use of the concrete and specific as better than the abstract and the general: "Do not write 'quite a distance' when you can just as well write 'twelve miles,' nor 'rude habitations' when you mean 'adobe huts,' nor 'intoxicating liquor' when you mean 'Kentucky bourbon.' Let your trees be maples or sycamores or live oaks, and your birds be towhees or blue jays or vireos. Give your characters a name, your incidents a date and even your sunsets a geographical location. Macaulay understood well the value of this device. The *Spectator* is 'served up every morning with the bohea and rolls.' When young men of rank went into the navy, 'Mulgrave, Dorset, Rochester, and many others, left the playhouses and the Mall for hammocks and salt pork.' Another man might have written, 'Whenever the Mahrattas threatened an incursion, the inhabitants fled for their lives.' But Macaulay writes: 'Whenever their kettledrums were heard, the peasant threw his bag of rice on his shoulders, hid his small savings in his girdle, and fled with his wife and children

to the mountains or the jungles—to the milder neighborhood of the hyena and the tiger.'

Variety in Controversy

"Variety is the life of speech." Deadly monotony, the opposite of variety, is something which kills controversial writing and speaking, or at least goes far toward killing the interest and the attention which anyone will pay to it. Monotony of sentence structure, of paragraph organization, monotony in words, in the use of evidence and illustrations—in fact, monotony of any kind—tires and alienates readers and listeners and makes persuasion difficult or impossible. The way to avoid monotony is by securing, first, variety of material; second, variety of phrase, sentence, and paragraph.

Obviously, the different qualities of a good style of writing and speaking are intermingled. Having some of them helps one to get the others. It is an application of the law, "To him that hath shall be given." He who has simplicity and vividness will more easily gain variety without taking special thought to obtain it.

Tact in Controversy

Tact does not mean hypocrisy, flattery, servility, obsequiousness, underhandedness, or deceit. Tact is much nearer to politeness, to consideration for the feelings of others, to good manners. Tact suggests that one does not use a sledge-hammer whether the task at hand properly requires a tack-hammer or a pile-driver. But tact does not rule out the linguistic sledge-hammer when one is appropriate. Tact requires that you adapt your language to the purpose and the occasion.

Tact never requires the absence of the strong language of denunciation or protest, when such language accurately fits the occasion. It is neither tactful, nor ethical, to treat well-loved

ignorance or known and deliberate misrepresentation, as slight error, inaccuracy, or innocent mistake.

The mere pretense of fairness, objectivity, the lack of bias is not tact. For instance, tact is no excuse for Mr. Blanshard's pretensions, in the beginning of his book, *American Freedom and Catholic Power,* that he is not going to attack the Catholic religion. This could hardly be a tactful or a persuasive device for anyone who reads the rest of the book, where he attacks religion bitterly on page after page. Ill-bred boasting of honesty and good intentions are not instances of a legitimate use of tact. It is a serious mistake to discount tact because some people seem to rely on a spurious imitation of it to the exclusion of careful and thorough preparation.

The following famous passage on "Tact and Talent," quoted from the London *Atlas* by Clark and Blanchard in their *Practical Public Speaking* seems still to be very much worth quoting:

"Talent is something, but tact is everything. Talent is serious, sober, grave, and respectable; tact is all that, and more, too. It is not a sixth sense, but it is the life of all the five. It is the open eye, the quick ear, the judging taste, the keen smell, and the lively touch; it is the interpreter of all riddles, the surmounter of all difficulties, the remover of all obstacles. It is useful in all places and at all times; it is useful in solitude, for it shows a man his way through the world.

"Talent is power, tact is skill; talent is weight, tact is momentum; talent knows what to do, tact knows how to do it; talent makes a man respectable, tact will make him respected; talent is wealth, tact is ready money. . . .

"Talent sees its way clearly, but tact is first at its journey's end. Talent has many compliments from the bench, but tact touches fees from attorneys and clients. Talent speaks learnedly and logically, tact triumphantly. Talent makes the world wonder that it gets on no faster, tact excites astonishment that it gets on so fast . . . Talent always has something worth hearing, tact is sure of an abundance of hearers; . . . talent convinces, tact converts."

Extemporaneous Speaking

Most of the best public speaking today is extemporaneous. This does not mean unprepared, impromptu. Extemporaneous speaking often demands more thorough preparation than other types.

Extemporaneous speaking is that type of public speaking in which a speaker knows in advance what, in substance, he is going to say, but in which the actual language used is selected and composed at the time of speaking. The speaker knows his subject; he has gathered his data; he knows where in his material he is to begin; he has planned the order of his main points or divisions. If the speech is to be very long or the subject is a complex or intricate one, he probably has an outline and notes in his hand or on his desk for reference. If he is adequately prepared he cannot get lost in his material; he cannot break down and not know what to take up next. His speech is prepared in all except the composition of the sentences to be used. He composes his speech as he goes along. This is extemporaneous speaking.

The best extemporaneous speaking has all of the most desirable qualities of the best conversation—liveliness, poise, directness, accuracy and completeness of information, freedom, and flexibility. It follows, therefore, that in all public speaking situations the speaking should be in every respect as close to good conversation as is permitted by the physical conditions under which the speech is made.

The extemporaneous speaker has the great advantage of the opportunity to change what he is going to say right up to the moment of utterance. The speaker who is reciting a memorized speech, or reading from a manuscript, is likely to get badly lost if he attempts to make a change. Obviously, the degree of intimacy in the speaker's contact with the audience is potentially much greater in extemporaneous speaking than in reading or reciting. If the speaker is in complete communication with his

audience he is using the language of the audience; he is talking with the audience instead of exhibiting his talents before it. All of this means that the extemporaneous speaker can take advantage of something that a speaker preceding him has just said; and, best of all, he can make use of the impressions that he gets constantly from the audience as he speaks: that a point has not been understood; that what he has just said has displeased a large part of the audience; that the audience is greatly pleased with what he is now saying; that the audience is getting tired; that it is time to stop.

American Catholics cannot well avoid the controversies which challenge them today; but they can and should avoid the kind of argument which their accusers use. The men who are currently spreading false accusations, misinformation, and innuendo against their Catholic fellow Americans have, in most instances, no other material available. The nature of their campaign prevents them from dealing in fact and truth and logic; but the answering Catholic can use all of these—*if he knows how.* However, he will make a fatal mistake if he attributes the gross errors of his opponents to stupidity. The leaders of the present anti-Catholic campaign are clever, literate, articulate propagandists who know how to exhibit the external appearances of scholarship, fairness, and often even friendliness toward their intended victims. To answer them effectively the Catholic will need to make good use of the facts, the truth, and the logic, which are already "on his side"; and "good use" means avoiding the chief faults and employing the chief strengths of controversy.

The arsenal is well stored with everything needed for the defense—except enough devoted members of the laity who *know how* best to use the material available. Material, devotion and know-how; these three, but the greatest need among these in this field is enough workers with sufficient "know-how."

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place and nature [illegible] society, Dr. O'Neill pr[illegible]ation of the specific controver[illegible] the beliefs, actions and objectives o[illegible]ican Catholics have been most vigorou[illegible] challenged and not infrequently misrepresented: the separation of church and state, religious education and censorship. He discusses each of these areas with the thoroughness, forthrightness and clarity so characteristic of his thinking.

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